Escrow4all B.V.
Kingsfordweg 241
1043 GR Amsterdam
the Netherlands

T +31 20 - 342 02 50

info@escrow4all.com
www.escrow4all.com

KvK Amsterdam 33.280.978
IBAN NL71ABNA0519084500
BTW/VAT NL8054.79.120.B01

GENERAL TERMS ESCROW ARRANGEMENT

Dialog

1 January 2019

Contract number SW2P18645

ESCROW4ALL

GENERAL TERMS ESCROW ARRANGEMENT

Dialog

The parties:

(1) Perflectie C.V., trading as Dialog, with registered office at Ondiep-Zuidzijde 6 in Utrecht (3551 BW), the Netherlands, (hereinafter referred to as "Dialog");

(2) ESCROW4ALL B.V. with registered office at Kingsfordweg 241 in Amsterdam (1043 GR), the Netherlands, (hereinafter referred to as "Escrow4all");

Whereas:

(a) pursuant to an agreement, Dialog has issued user(s) with a right of use in respect of the Product (as defined below), which Product can be accessed by user(s) online;

(b) Dialog acknowledges that user(s) has an interest in the continuous and uninterrupted use of the Product;

(c) Dialog is prepared to take measures in order to ensure the continuous and uninterrupted use of the Product by user(s) insofar as possible;

(d) Dialog is prepared to deposit with Escrow4all essential information required for the continuous and uninterrupted use of the Product, with due observance of the following provisions;

(e) Escrow4all undertakes to execute the Continuity Plan and hand over the Material to the entitled user only in the situations described in the Agreement.

It is agreed as follows:

Clause 1 – Definitions

The following definitions shall have the following meaning in these General Terms:

Agreement: the escrow agreement between Dialog and Escrow4all, including the annexes hereto, with agreement number SA2P18645;

Basic Information: information relating to the Product which is required to gain access to the Product, to keep the Product operational online and to maintain the Product, not including the source code and the Technical Documentation;

Beneficiary: any person, firm, company and other legal person or entity:
- to whom a right of use in respect of the Product has been granted (User); and
- who has been issued with an Escrow Certificate by Escrow4all;

Beneficiary Declaration: a written request through which Dialog subscribes a User to the escrow arrangement;

Continuity Plan: a set of services and information aimed at enabling Beneficiary, in certain situations, to continue use of the Product for a certain period of time independently of Dialog;

Continuity Purposes: use of the Basic Information and/or Material strictly and solely for maintenance, correction, modification, extension or continuous use of the Product with due observation by Beneficiary of the restrictions in the SaaS Agreement concerning among others intellectual property rights, use, confidentiality, reproduction and distribution;

Contribution for Performance of Continuity Plan: A one-time contribution, as specified in clause 10.1, immediately due by Beneficiary to Escrow4all, for the coverage of costs for the services to be rendered by Escrow4all as further specified in clause 7.9 (a) and (b);

Deposit Form: the form setting out the details of the Material provided;

Escrow Certificate: a certificate to be issued to User by Escrow4all - within 5 business days after receipt of a Beneficiary Declaration - confirming escrow cover pursuant to the terms and conditions of the Agreement and the related General Terms Escrow Arrangement;

Escrow Portal: a secured website, only accessible with a personal username/password, provided and maintained by Escrow4all as part of its services and standard procedures whereby parties (Dialog and Beneficiary) can obtain specific information on the Agreement such as Material on deposit and copies of verification reports;

General Terms Escrow Arrangement: the terms of the Agreement submitted as regulations, which are indissoluble applicable to and be part of the escrow arrangement between Dialog, Beneficiary and Escrow4all;

Hosting Services: the provision of space on a server which is connected to the internet;

Material:
- source code of the Product and any modifications, updates or corrections of the Product in as far as Dialog has granted Beneficiary a right of use; and
- all relevant Technical Documentation required to maintain the Product;

Medium: the data carrier(s) on which the Material is provided;

Product: the (online) software application(s) for which User, in accordance with the SaaS Agreement, has been granted a right of use and as further specified in **Annex I 'Product'**;

SaaS Agreement: the agreement between Dialog and User that grants User the right to use the Product;

Technical Documentation: the technical documentation which is required to enable Beneficiary to maintain, amend and/or correct the source code of the Product;

Upload/Uploading: the digital delivery resp. of the Material to de servers of Escrow4all;

VerifOne: the tests and processes forming Escrow4all's VerifOne testing service, in so far as they can be applied to the Material;

VerifTwo: the tests and processes forming Escrow4all's VerifTwo testing service, in so far as they can be applied to the Material;

VerifThree: the tests and processes forming Escrow4all's VerifThree testing service, in so far as they can be applied to the Material.

Clause 2 – Subject

2.1 The Agreement provides for a number of continuity services to be delivered by Escrow4all for the benefit of Beneficiary. Said continuity services are aimed at enabling Beneficiary in certain situations to continue use of the Product and/or to maintain the Product independently of Dialog.

2.2 The Agreement provides for a Continuity Plan as a standard feature, with the option of acquiring supplementary continuity services by Beneficiary. The scope of the continuity services are set out in **Annex II 'Scope of Continuity Services'**.

Clause 3 – Continuity Plan (Deposit of Basic Information)

3.1 For the purpose of the Continuity Plan, Dialog will make the Basic Information available to Escrow4all within 20 business days of the Agreement taking effect.

3.2 Dialog warrants that the Basic Information is accurate and is sufficient to guarantee, insofar as possible, Beneficiary's continued use of the Product under the circumstances referred to in Clause 7.1 below.

3.3 Dialog warrants and represents that it is entitled to transfer the Basic Information to Escrow4all and agrees to indemnify and hold harmless Escrow4all from and against any claim by a third party in relation to use of the Basic Information by Escrow4all and/or release of the Basic Information to Beneficiary in accordance with the provisions of the Agreement.

3.4 Dialog will ensure by contract the continues provision of Hosting Services with regard to the Product by a provider of Hosting Services that has declared that it agrees to the agreement as laid down in **Annex III 'Agreement Continuation Hosting Services'**. For purposes of the declaration referred to above, Dialog will formally request its provider of Hosting Services to sign the Agreement Continuation Hosting Services.

Dialog is entitled at all times to contract a new provider for the provision of Hosting Services with regard to the Product, provided that this provider is prepared to enter into an Agreement Continuation Hosting Services.

3.5 Dialog shall, from time to time, but no later than 10 business days after changes to the Basic Information have come into effect, provide, in writing, these changes to Escrow4all.

3.6 Escrow4all shall confirm to Beneficiary and Dialog via the Escrow Portal receipt of the Basic Information.

3.7 Dialog grants Escrow4all the right to:

- use the Basic Information for the verification purposes as described in Clause 4 below;
- make a back-up copy of the Basic Information, in as far as this is required for Escrow4all to meet its obligations under the Agreement;
- in the events referred to in Clause 7 below, to use the Basic Information, to contact the contact persons identified therein and to perform technical and/or other activities relating to the Product in order to provide Beneficiary with technical support.

3.8 Dialog shall throughout the term of the Agreement hold available a copy of the Basic Information as back-up.

Clause 4 – Verification Basic Information

4.1 Escrow4all shall verify the Basic Information as provided by Dialog in accordance with the specifications as laid down in **Annex IV 'Technical Verification Basic Information'**. Escrow4all shall inform Beneficiary and Dialog via the Escrow Portal of its findings.

4.2 If verification shows that the Basic Information is not accurate or complete, then Dialog shall restore the discrepancy within 10 business days after notification to that effect by Escrow4all.

Clause 5 – Supplementary Continuity Services (Deposit of Material)

5.1 For the purpose of the Continuity Plan, Dialog will Upload the Material or transfer ownership of the Medium containing the Material to Escrow4all within 20 working days of the Agreement taking effect.

If a Medium is used, full ownership of the Medium is transferred to Escrow4all under the resolutive condition of Escrow4all's bankruptcy. If the resolutive condition is met, the Medium will be returned by Escrow4all to Dialog immediately.

5.2 Dialog warrants and represents that it is entitled to transfer the Material to Escrow4all in accordance with the terms and conditions of the Agreement and indemnifies and holds harmless Escrow4all from and against any claim by a third party in relation to the release of the Material to Beneficiary in accordance with the terms and conditions of the Agreement.

5.3 Dialog will again deposit all changes, updates and / or corrections of the Product with Escrow4all no later than 6 months after the previous deposit.

5.4 Escrow4all shall notify Beneficiary and Dialog via the Escrow Portal of receipt of the Material.

5.5 Escrow4all shall store the three latest deposits of the Material for the term of the Agreement. Older Material than the three latest deposits shall be destroyed by Escrow4all without requiring prior approval from Dialog and/or Beneficiary.

5.6 Transfer of ownership, condition subsequent, of the Medium as referred to under Clause 5.1 and 5.3 shall not include a transfer to Escrow4all of any intellectual property rights in the Material. These remain at all times vested with Dialog.

5.7 Dialog grants Escrow4all the right to:

- make a back-up copy of the Material, in as far as this is required for Escrow4all to meet its obligations under the Agreement;
- load the Material on a computer system in order to perform verification in the areas of completeness and readability;
- release the Material to Beneficiary in accordance with the circumstances referred to in Clause 8.

5.8 Dialog shall throughout the term of the Agreement hold available a copy of the Material as back-up.

Clause 6 – Verification of Material

6.1 With each delivery, Dialog shall provide to Escrow4all a Deposit Form setting out the details of the Material which is deposited on behalf of Beneficiary.

6.2 Dialog warrants and represents that the Material is an accurate and complete reflection of the Product used by Beneficiary. Dialog warrants and represents to Beneficiary that the Material deposited with Escrow4all is sufficient to enable a suitably qualified person to use the Material to maintain, amend, correct and compile the Product.

6.3 Escrow4all shall execute a VerifOne testing of the Material, in order to establish presence and readability of the components as detailed on the Deposit Form and inform Beneficiary and Dialog via the Escrow Portal of its findings within 5 business days after the verification has been completed.

6.4 Beneficiary shall at any time be entitled to request Escrow4all for extended verification (VerifTwo or VerifThree). Should an extended verification be requested Dialog is obliged to cooperate in the execution of such a verification, in as far as this is reasonable and required.

6.5 The costs of Escrow4all, Dialog and Beneficiary borne by the additional verification set out under Clause 6.4 above, shall be to the account of Beneficiary, unless the verification shows that Dialog materially has not met its obligations under the Agreement, in which case Dialog shall bear the relevant costs.

6.6 If verification shows that the Material as deposited with Escrow4all does not contain an accurate and complete reflection of the Product, then Dialog shall restore the discrepancy within 20 business days after notification to that effect by Escrow4all.

6.7 Further specification on the actual content and scope of VerifOne, VerifTwo or VerifThree can be found on www.escrow4all.com. Escrow4all reserves the right to amend the content and scope of these verifications from time to time.

Clause 7 – Request for Performance of Continuity Plan

Grounds for requests for performance

7.1 Provided that Beneficiary has a valid right of use in respect of the Product and hereby declares it is willing to pay the Excess for Performance of Continuity Plan, Beneficiary will be entitled to request the performance of the Continuity Plan if:

(a) without any prior announcement from Dialog, use of the Product has been rendered impossible during an uninterrupted period of at least 48 hours;

(b) one of the circumstances referred to in Clause 8.1(b) up to and including (e) below has occurred;

(c) Escrow4all has received a written notification from the provider of Hosting Services in respect of the Product that the provider of Hosting Services is entitled to dissolve or otherwise terminate the agreement it concluded with Dialog due to a circumstance that is attributable to Dialog.

Request procedure

7.2 If, in Beneficiary's opinion, a circumstance as described in Clause 7.1(a) or (b) has occurred and it, in view of this circumstance, wishes Escrow4all to perform the Continuity Plan, it will so notify both Dialog and Escrow4all, by registered letter with acknowledgement of receipt, describing the circumstance in question. The letter should be signed by an authorised officer of Beneficiary and should be submitted together with any accompanying documents in Beneficiary's possession that support its analysis.

In case of a request in accordance with Clause 7.1(a) Beneficiary will also declare, in writing, that the occurrence of the circumstance is not the result of defects and/or shortcomings of Beneficiary and/or its supplier in network, telecommunication and related services which are essential for use of the Product.

7.3 Escrow4all will confirm its receipt of a written notification from the provider of Hosting Services in accordance with Clause 7.1 above, as well as of any request from Beneficiary in accordance with Clause 7.2 above, within 3 days of such receipt, by means of a registered letter with acknowledgement of receipt, to both Dialog and Beneficiary.

7.4 If Dialog objects to Beneficiary's request for performance of the Continuity Plan in accordance with Clause 7.2 above, Dialog will be entitled to submit the question whether Beneficiary is entitled to request the performance of same to the Foundation for ICT Dispute Resolution [*Stichting Geschillenoplossing Organisatie en Automatisering*] for settlement in accordance with Clause 8.7 below. If Dialog involves the Foundation for ICT Dispute Resolution, this will not suspend the performance of the Continuity Plan. If the Foundation for ICT Dispute Resolution rules that the grounds advanced do not justify the request for performance, the performance of the Continuity Plan will be halted immediately and Beneficiary shall cease its use of any information obtained forthwith and destroy the relevant information as well as any copies thereof. In addition, Beneficiary will owe Dialog an immediately due and payable penalty, without any warning or notice of default being required, of € 15,000 (in words: fifteen thousand euros), without prejudice to the other rights vested in Dialog, including the right to claim damages.

7.5 The performance of the Continuity Plan may be halted at all times if it has been reasonably demonstrated that Dialog will perform/resume its obligations under the SaaS Agreement and Beneficiary has agreed in writing to such performance being halted. In that event, Beneficiary will discontinue its use of any information obtained forthwith and destroy the relevant information as well as any copies thereof.

7.6 If the performance of the Continuity Plan is halted in accordance with Clause 7.4 or 7.5 above, the Continuity Plan laid down in the present Clause will again take full effect and may again be invoked by Beneficiary in appropriate cases.

7.7 In the event of any abuse by Dialog or Beneficiary of the Continuity Plan, which includes any unjustified request for performance thereof, Escrow4all will be entitled to recover any costs incurred by it in connection with the performance of the Continuity Plan from the relevant party.

Following a request for performance

7.8 The date of Escrow4all's receipt of a written notification from the provider of Hosting Services in accordance with Clause 7.1 above or a request from Beneficiary in accordance with Clause 7.2 above will be presumed to be the effective date of the Continuity Plan's performance, hereafter referred to as 'the Effective Date'.

7.9 Under the Continuity Plan, Beneficiary will be entitled to:

(a) the continuation of the Hosting Services required for the use of the Product, starting on the Effective Date and running for the period specified in Annex III 'Agreement Continuation Hosting Services';

(b) an investigation by Escrow4all into the cause, nature and scope of the problems that have arisen in the Product or its use and/or the problems that have arisen at Dialog. Escrow4all will notify Dialog and Beneficiary within ten days of the Effective Date of its findings and, where appropriate, of possible solutions and the corresponding costs required to enable the resumption of the Product's use in the shortest possible term;

(c) at Beneficiary's request, technical support by Escrow4all for purposes of rendering the Product operational and/or the Product's use. Escrow4all will charge the costs of this support to Beneficiary on the basis of actual costing, in accordance with its standard rates at that time.

7.10 Dialog undertakes in advance to extend full cooperation to Escrow4all for purposes of any investigation to be performed by Escrow4all in accordance with Clause 7.9.

Clause 8 – Release of Material

Grounds for release

8.1 Provided that the parties have agreed on the deposit of Material and Beneficiary has a valid right of use in respect of the Product, Beneficiary will be entitled to the release of the Material if:

(a) at least 21 days have elapsed since the Effective Date as referred to in Clause 7.8 without the performance of the Continuity Plan being halted in accordance with Clause 7.4 or 7.5;

(b) Dialog discontinues its business operations without transferring its obligations under the SaaS Agreement to one or more third parties in a legally valid manner;

(c) Dialog is declared bankrupt or is granted a suspension of payments;

(d) after receiving proper notice of default, Dialog has remained in default for at least 30 days in the performance of its obligations under the SaaS Agreement or the Agreement;

(e) Dialog is unable for at least 120 days to perform its obligations under the SaaS Agreement or the Agreement as the result of a situation of *force majeure*;

and

insofar as, based on objective standards, the continuity of Beneficiary's use of the Product is at risk.

Release procedure

8.2 If in the opinion of Beneficiary an event referred to in Clause 8.1 occurs and Beneficiary requires the release of the Material on the basis thereof, Beneficiary shall send a registered letter with acknowledgement of receipt to this effect to Dialog and Escrow4all describing the circumstance in question. The letter should be signed by an authorised officer of Beneficiary and should be submitted together with any accompanying documents in Beneficiary's possession that support its analysis.

8.3 Upon receipt of such notice as set out under Clause 8.2 above Escrow4all shall within 3 days notify Dialog by registered letter with acknowledgement of receipt that a request for release of Material has been received.

8.4 Within 14 days of the date of such notification from Escrow4all, Dialog may object to the release, unless Dialog is declared bankrupt. In that event, Dialog will not be entitled to object.

8.5 If Dialog does not object to the release within fourteen days or if it is not entitled to object for reasons as referred to in Clause 8.4, Beneficiary's right to the release of the Material will have been established.

8.6 If Dialog does not object to the release, it will so notify Escrow4all in writing as soon as possible, so that it will not be necessary to await the expiry of the above-mentioned 14 day period.

8.7 If Dialog objects, within the term set for that purpose in Clause 8.4, against release of Material as requested by Beneficiary, Dialog and Beneficiary will submit the question whether Beneficiary is entitled to such delivery to the Foundation for ICT Dispute Resolution (*Stichting Geschillenoplossing Organisatie en Automatisering*), hereafter referred to as 'the Foundation', established in Haarlem, the Netherlands, for a ruling in arbitral preliminary relief proceedings [*Arbitraal Kort Geding*] in accordance with the Foundation's Arbitration Regulations. The Foundation's ruling will be binding on all parties.

Following release of Material

8.8 If, after the steps described in Clause 8.2 up to and including 8.7 above have been followed, it is established that Beneficiary is entitled to release of the Material, Escrow4all will be obliged to release the Material immediately.

8.9 If Escrow4all releases the Material to Beneficiary pursuant to this Clause, Dialog now for then grants Beneficiary the non-transferable, non-exclusive right to use the Material for Continuity Purposes and for the use thereof solely in connection with the business of Beneficiary.

8.10 Beneficiary warrants and represents that it shall use the Material which is released to it under this Clause for the purposes described in Clause 8.9 only and solely for its internal business purposes. Beneficiary acknowledges that the relevant conditions of the SaaS Agreement, including, but not limited to, the conditions of intellectual property rights, use, confidentiality, reproduction and distribution remain in force.

8.11 Beneficiary is prohibited from using or allowing others to use the Material for purposes other than those described in the Agreement, on pain of an immediately due and payable penalty, without any warning or notice of default from Dialog being required, in the amount of € 50,000 (in words: fifty thousand euros) per violation and € 5,000 (in words: five thousand euros) for each day that such violation continues, without prejudice to the other rights vested in Dialog, including the right to claim damages if and insofar as the damage exceeds the amount of the penalty.

Clause 9 – Escrow4all's Obligations

Regarding security, confidentiality and use of the Basic Information and Material

9.1 Escrow4all will provide for adequate security and safe storage of the Basic Information and/or the Material. Escrow4all will take any measures it may reasonably be expected to take in this context, taking account of the intent of the Agreement and the interests of both Beneficiary and Dialog in the due care to be observed by Escrow4all in respect of the Basic Information and/or the Material.

9.2 If despite the security measures and other precautions taken by Escrow4all damage is done to, or loss takes place of, the Basic Information and/or Material, Escrow4all shall be obliged to promptly notify Dialog. Dialog shall be obliged to promptly provide a new copy of the Basic Information and/or Material to Escrow4all in accordance with Clause 3.1 and 5.1 above. The costs of providing a new copy shall be to the account of Escrow4all unless and to the extent that Dialog has not complied with its obligations to keep back-up copies as set out under Clause 3.8 and 5.8.

9.3 If and insofar as Escrow4all learns of any confidential information, it will maintain this confidentiality, which duty of confidentiality it will also impose on its personnel and any authorised third parties. For purposes of this Clause, confidential information will include:

- the Material and Basic Information provided;
- any information and matters that have been identified as such by Beneficiary and/or Dialog;
- any information and matters of which Escrow4all should reasonably understand that they are confidential, without such confidential nature having been brought expressly to its attention.

9.4 Escrow4all shall not disclose or divulge the Material and/or Basic Information to any third person save such of its employees who need the Material and/or Basic Information for verification purposes under the Agreement. Escrow4all will see to it that immediately after a verification procedure the Material and/or Basic Information and any copy made will be removed from the verification system used for the verification.

9.5 Escrow4all will use the Material and/or Basic Information only for purposes for which it is authorised under the Agreement.

9.6 If personal data are processed by Escrow4all, it will be regarded as a sub-processor for Dialog or, after the Continuity Plan has been effectuated, as a processor for Beneficiary. In this regard, Escrow4all and Dialog conclude a data processing agreement. This data processor agreement is attached to the Agreement as Annex VI. Upon performance of the Continuity Plan, Beneficiary and Escrow4all will conclude a data processing agreement that complies with the then applicable laws and regulations as soon as possible.

Clause 10 – Fees

10.1 The Contribution for Performance of Continuity Plan is actual hosting costs equally divided under all Beneficiaries.

10.2 For the services to be rendered by Escrow4all under the Agreement, Dialog shall be due escrow fees. The (possible) recharge of the escrow fees to Beneficiary is separately agreed upon between parties.

Clause 11 – Terms & Termination

11.1 The Agreement shall commence on the date of the Agreement and shall be entered into for indefinite time.

11.2 The Agreement may be terminated:

(a) By Beneficiary in respect of itself only on 3 months notice by delivering a written notice to this effect to Dialog and Escrow4all.

(b) By Dialog, in the event that Escrow4all:

- has petitioned for suspension of payment(s) and/or has been declared bankrupt;
- has been dissolved and liquidated or closes down its businesses;
- has committed a material breach of the Agreement, which is not resolved within 20 business days after written notice of default.

(c) By Dialog, with respect to the entire Agreement, by written notice of three (3) months to Escrow4all. Escrow4all is then obliged to immediately notify the Beneficiary of the cancellation.

(d) By Dialog and Beneficiary as a unanimous request on 3 months notice by delivering a written notice to this effect to Escrow4all.

(e) By Escrow4all, in the event that the fees have not been paid, and Dialog has not paid such fees after receipt of a written notice of default by Escrow4all, pursuant to which a reasonable term for payment is granted.

11.3 In case the Agreement is terminated in accordance with Clause 11.2 sub (b), Dialog is obliged to deposit the Basic Information and/or Material with another escrow provider on terms and conditions similar to those in the Agreement. Escrow4all thereupon is obliged to transfer the Basic Information and/or Material, to either the escrow provider or, in case Beneficiary decides not to continue the escrow arrangement, to Dialog itself.

11.4 If the Agreement is terminated other than the circumstance described in Clause 11.2 sub (b) Escrow4all shall destroy the Basic Information and/or Material or, upon written request of Dialog and at Dialog's cost, return the Basic Information and/or Material to Dialog.

11.5 The Agreement is considered terminated once 3 months have passed since 'the Effective Date' providing the arrangement as laid down in Clause 7.6 has not taken effect or when Escrow4all has released the Material to Beneficiary in accordance with Clause 8 of the Agreement.

Clause 12 – Miscellaneous

12.1 In all cases where the Agreement mentions the obligations to give written notice, such notice shall be sent to the following addresses:

For Dialog:
Perflectie C.V. | Dialog
Ondiep-Zuidzijde 6
3551 BW Utrecht
the Netherlands

For Escrow4all:
Escrow4all BV
Attn. Customer Services
Kingsfordweg 241
1043 GR Amsterdam
the Netherlands

12.2 The Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

12.3 The whole text of the General Terms Escrow Arrangement has been written in Dutch and English, both versions being deemed authentic, but for legal purposes the text in Dutch is to be given priority of interpretation.

Clause 13 – Liability

13.1 Escrow4all shall be liable to Dialog and/or Beneficiary for direct damage arising out of, or in connection with, the performance of the Agreement due to gross negligence or willful misconduct, in which case its obligation to pay damages shall not exceed a sum of € 1.000.000 (in words: one million euro) in total.

13.2 Escrow4all shall not be liable to Dialog, Beneficiary and/or third parties for any indirect damage including, but not limited to, industrial damage, loss of data, loss of profits and/or other consequential damages.

13.3 Escrow4all shall be responsible for the diligent execution of the verifications. Escrow4all shall not be responsible for the completeness, accuracy, functionality and/or correctness of the Basic Information, the Continuity Plan and/or the Material.

13.4 Escrow4all will provide the continuity services with due care and with professional competence, on the basis of a best effort obligation, except if and insofar as the parties have expressly agreed otherwise.

Clause 14 – Assignment

14.1 Dialog undertakes to make the terms of the Agreement part of any transfer of ownership of the intellectual property rights of the Product to a third party.

14.2 In the event of a transfer as described in Clause 14.1, Dialog shall provide written notification to this effect to both Beneficiary and Escrow4all.

Clause 15 – Applicable Laws & Disputes

15.1 The Agreement and all disputes arising from or in relation to the Agreement will be governed by the laws of the Netherlands.

15.2 Subject to objection to a request for performance of the Continuity Plan and release of the Material as described in article 7.4 or article 8.7 respectively all other disputes arising out of, in relation with or in connection with this Agreement or any agreements resulting from will be brought exclusively before the competent court in Amsterdam.

Annex I – Product

Dialog declares to deposit with Escrow4all the following Basic Information and/or Material concerning the Product as specified below, in accordance with the terms and conditions of the Agreement this Annex is part of:

Product
(name as known by Beneficiary): ____Dialog_____

☒ *Basic Information*

Description	*Yes*	*No*
Access Check Form	☒	☐
Maintenance Check Form	☒	☐
Agreement Continuation Hosting Services (Annex III)	☒	☐

☒ *Material*

Description	*Yes*	*No*
Source Code	☒	☐
Technical Documentation	☒	☐
Deposit Form	☒	☐

Annex II – Scope of Continuity Services

Description	*Yes*	*No*	*Optional*
Execute Access Check (+ reporting)	☒	☐	☐
Execute Maintenance Check (+ reporting)	☒	☐	☐
Execute VerifOne verification (+ reporting)	☒	☐	☐
Execute VerifTwo verification (+ reporting)	☐	☐	☒
Execute VerifThree verification (+ reporting)	☐	☐	☒
Discuss and explain *Agreement Continuation Hosting Services (Annex III)* with provider of Hosting Services	☒	☐	☐
Technical support after Continuity Arrangement	☐	☐	☒

Annex III – Agreement Continuation Hosting Services

SIGNED VERSION (WITH TRANSIP) AVAILABLE VIA ESCROW PORTAL

The undersigned parties:

(I) [Hosting Provider] (COC xxxxxxx), with registered office at [Address], [City] ([Postal Code]), [Country] hereby legally represented by [Initials + Name], (hereinafter referred to as "Hosting Provider");
and

(II) ESCROW4ALL B.V. (COC 33280978), with registered office at Kingsfordweg 241, Amsterdam 1043 GR), the Netherlands, hereby legally represented by [Initials + Name], (hereinafter referred to as "Escrow4all");

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Whereas:

(a) Hosting Provider concluded an agreement with Dialog, hereafter referred to as: 'Dialog', pursuant to which the Hosting Provider is obliged to provide hosting services to Dialog, as further defined in the said agreement;

(b) Dialog uses the said hosting services for, *inter alia*, the provision of services to its customers, more particularly to enable the online access to one or more software applications by its customers, for purposes of the use of such applications;

(c) Dialog's customers require continuity of the services provided by Dialog, in which context Dialog has entered into an agreement with Escrow4all, providing for such continuity;

(d) in those situations where Dialog should no longer be considered able to provide services to its customers, Dialog's customers with which this has been agreed will be able to claim various continuity services, enabling these customers' continued use of the services offered by Dialog for a certain period of time;

(e) the continued provision of hosting services is essential to the continued use as described in the preceding recital;

(f) Hosting Provider is prepared to continue the provision of hosting services for a certain period of time, also in those events where it is entitled to terminate – with immediate effect or otherwise – the agreement concluded between it and Dialog;

(g) the parties wish to lay down their agreements in the Agreement;

Have agreed as follows:

1. Hosting Provider will notify Escrow4all in writing immediately if Hosting Provider is of the opinion that it is entitled to dissolve or otherwise terminate the agreement it concluded with Dialog on the provision of hosting services, hereafter referred to as 'the Hosting Agreement' due to a circumstance that is attributable to Dialog. The said notification from Hosting Provider should be submitted together with accompanying documents in Hosting Provider's possession that support its findings. Escrow4all will confirm its receipt of Hosting Provider's notification in writing, by means of a registered letter with acknowledgement of receipt.
2. Hosting Provider undertakes vis-à-vis Escrow4all to continue to provide the hosting services agreed in the Hosting Agreement for a period of three months or as long as covered by the amount as mentioned in article 3, starting on the date of Escrow4all's receipt of the written notification referred to in Clause 1.
3. Escrow4all undertakes vis-à-vis Hosting Provider to pay it a fee for the hosting services provided by Hosting Provider pursuant to Clause 2, subject to a maximum of [amount] per year. The payable amount will be fixed on the basis of the prices agreed in the Hosting Agreement. Hosting Provider will not be entitled to charge Escrow4all the fee payable by it until the period referred to in Clause 2 has expired.
4. Escrow4all will not be liable for any claims from Hosting Provider vis-à-vis Dialog, irrespective of whether they are based on the Hosting Agreement.
5. In the event of any abuse by Hosting Provider of the provisions made in the Agreement, including any evident unjustified request for performance of same pursuant to Clause 1, Escrow4all will be entitled to recover any costs incurred by it as a result from Hosting Provider.

Annex IV – Technical Verification Basic Information

Access Check
Verification which focuses on verifying the access data as specified by Dialog. Components of this verification consist of but are not limited to:

- Check on correctness provided Basic Information (Access Check Form):
  - Overview ISP environment;
  - Overview hard/software environment;
- Check of accessibility software environment using the Basic Information.

Maintenance Check
Verification which focuses on obtaining maximum information on the development/production environment and related continuity issues. Components of this verification consist of but are not limited to:

- Obtain data on the development environment;
- Obtain data on the infrastructure (production/ISP environment);
- Obtain data on the back-up facilities;
- Obtain contact data of relevant technical staff;
- Obtain all available documentation.

> - In accordance with *Clause 4 – Verification Basic Information* a report is created and issued (<u>without</u> the acquired Basic Information).

Next to this – if applicable – a technical verification of the Material is executed:

VerifOne
Verification which focuses on verifying that the source code and technical documentation of the Product has been provided.

Annex VI - Data Processing Agreement

This Data Processing Agreement forms an integral part of the escrow agreement ("Agreement") between Escrow4all, SaaS Provider and Beneficiary as Annex VI. The capitalized term in this Data Processing Agreement has the same meaning as that assigned to it in the Agreement, unless expressly provided otherwise.

The terms personal data, special categories of personal data, controller, processing and processing are given the same meaning as in the General Data Processing Regulation (GDPR).

In the event of a conflict between this Data Processing Agreement and the Agreement, this Data Processing Agreement will prevail.

Article 1 - Details of the processing

1.1 Escrow4all processes personal data for SaaS Provider in the context of the services described in the Agreement. SaaS Provider in turn processes personal data for Beneficiary as controller or sub-processor. This Data Processing Agreement assumes that SaaS Provider is a processor and Escrow4all is a sub-processor.

1.2 Escrow4all processes the personal data exclusively in the context of the Agreement for the performance of the Continuity Services and not for its own purposes.

1.3 The types of personal data consist of:

A. personal data processed by SaaS Provider on the basis of the agreements between SaaS Provider and its clients (Beneficiaries) insofar as Escrow4all processes these as part of the Basic Information;

B. personal data of employees of SaaS Provider which forms or will form part of the Basic Information.

1.4 Authorized employees of Escrow4all and the third parties engaged by it to perform the Continuity Services have access to the personal data. These personal data are used exclusively in the context of the performance of the Continuity Services.

1.5 Escrow4all stores the personal data in accordance with what is described in the Agreement.

1.6 Escrow4all does not process personal data outside the European Union (EU) for the SaaS Provider.

1.7 Escrow4all will always request prior approval from SaaS Provider if it makes use of third parties in the performance of the Continuity Services.

Article 2 - Instructions SaaS Provider

2.1 Escrow4all will only process the personal data in the context of the performance of the Agreement in accordance with the instructions of SaaS Provider for the purpose described in Article 1.

Article 3 – Transfer of Personal Data outside the European Union

3.1 Escrow4all will not pass on personal data to or make it accessible from a country outside the European Union without prior permission from SaaS Provider.

3.2 If, contrary to the provisions of Article 3.1, the right of an EU member state requires Escrow4all to process personal data outside the European Union, Escrow4all will, where possible, notify SaaS Provider of the legal requirement in advance, unless this is prohibited by this legislation.

Article 4 – Confidentiality and special category data

4.1 Personal data is confidential. Escrow4all will only give employees and/or third parties access to personal data when this is necessary to execute the Agreement. Escrow4all ensures that these employees and/or third parties are obliged to maintain the confidentiality of the personal data.

4.2 In principle, Escrow4all does not process special category data for SaaS Provider, such as medical or criminal data. If applicable and required, Escrow4all is prepared to make further agreements with regards to processing of special category data.

Article 5 – Security

5.1 Upon execution of the Agreement, Escrow4all will ensure that appropriate technical, physical and organizational measures are taken to protect the personal data against loss or any form of unlawful processing.

5.2 These measures ensure that an appropriate level of security is achieved, taking into account the state of the art and the costs of implementation, in view of the risks involved in processing and the nature of the data to be protected.

5.3 Escrow4all is ISO 27001 certified and has implemented an appropriate written security policy for the processing of personal data.

Article 6 – Reporting data breaches

6.1 Escrow4all will inform the contact person of SaaS Provider as soon as possible, in any case within 24 hours after discovery about all (suspected) breaches in connection with personal data ("Data Breach"). The reporting of a Data Breach is made to the contact person of SaaS Provider.

6.2 In the event of a Data Breach, Escrow4all immediately takes remedial actions. Escrow4all fully cooperates with SaaS Provider in establishing and implementing a response plan. Escrow4all will assist SaaS Provider and the controller in adequately informing the individuals and the supervisory authority(ies) involved.

6.3 Escrow4all provides SaaS Provider with the reporting of all relevant information, including at least about (i) the nature of the Data Breach, (ii) the (possibly) affected personal data, (iii) the observed and the likely consequences of the Data Breach, and (iv) the measures that have been or will be taken to resolve the Data Breach or to limit the consequences/damage as much as possible. If it is not possible to provide all information simultaneously, the information can be provided in steps without unreasonable delay.

6.4 Escrow4all keeps records of Data Breaches of SaaS Provider and the measures taken in its administration and allows SaaS Provider to inspect them upon request

Article 7 – Engaging third parties

7.1 Escrow4all may only engage third parties ("Sub-processors") with the prior written consent of SaaS Provider. This also applies to intended changes of Sub-processors, whereby SaaS Provider will not withhold its approval on unreasonable grounds.

7.2 Escrow4all remains fully responsible towards SaaS Provider for the compliance of the Sub-processor with the provisions of this Data Processing Agreement.

7.3 Escrow4all ensures that Sub-processors are contractually bound to the same personal data protection obligations as those to which Escrow4all is bound by virtue of the Data Processing Agreement, in particular the obligation to apply appropriate technical and organizational measures to ensure that the processing meets the legal requirements.

7.4 Escrow4all provides SaaS Provider, at its request, with all information that is necessary to demonstrate compliance with the obligations under this article. Escrow4all will allow SaaS Provider to inspect the relevant parts of agreements concluded with the Sub-processors. Insofar as SaaS Provider deems this necessary, it will propose changes. Escrow4all will implement the proposed changes if this can reasonably be expected of Escrow4all.

Article 8 – Cooperation with complaints, requests and exercise of rights by those involved

8.1 Escrow4all handles questions and requests from SaaS Provider regarding the processing of

8.2 Escrow4all immediately informs SaaS Provider about complaints, requests or questions from customers of SaaS Provider regarding the processing of personal data under the Agreement. Escrow4all may not directly contact a customer of SaaS Provider, unless SaaS Provider has specifically instructed this.

8.3 Escrow4all enables SaaS Provider to comply with the rights of those involved within the legal time limits, such as the right to inspect, correct or remove.

Article 9 – Return and destruction of Personal Data

9.1 Upon termination of the Agreement, Escrow4all will return or destroy the Personal Data and all copies thereof to SaaS Provider at the choice of SaaS Provider, unless the Agreement or applicable legislation states otherwise

9.2 Escrow4all will confirm in writing to SaaS Provider that it has returned or destroyed all personal data and copies thereof.

Article 10 – Audits

10.1 SaaS Provider and the controller have the right to have an independent external auditor or its internal audit department conduct an investigation into compliance with this Data Processing Agreement. An audit is announced in advance if that is reasonably possible. Escrow4all will participate in an audit.

10.2 The reasonable costs of Escrow4all for supervising an audit are at the expense of SaaS Provider. If an audit shows that Escrow4all fails to comply with the obligations contained in this Data Processing Agreement, these costs and the audit costs reasonably incurred by SaaS Provider and/or the controller will be at the expense of Escrow4all.

Article 11 – Processing register

11.1 If Escrow4all is legally obliged to do so, Escrow4all will keep a register of all its processing activities. This register is made available to the supervisor upon request. Escrow4all will inform SaaS Provider about this, if possible in advance.

ESCROW4ALL

Application Form Escrow Beneficiary

Escrow4all Information			
Supplier	Perflectie C.V. | Dialog	Sales Consultant	Herman Kui
Contract number	SA2P18645	Contact data	herman.kui@escrow4all.com

Information required to register Escrow Beneficiary under the Frame Agreement

Data Beneficiary			
Company name			
Department			
Registered office			
Postal Code		City	
Correspondence			
Postal Code		City	
Country		Phone number	
Contact name (main contact)			
Name		Job title	
Direct tel. / mobile		Email	
Name 2nd contact (optional as back-up)			
Name		Job title	
Direct tel. / mobile		Email	

Specific Information			
Start application	☐ immediately	Other, by	
Product	[Product]	Version	
Remarks			

Please complete fully and email to: sales@escrow4all.com

The application will – after verification – be processed within 5 business days

Escrow4all B.V.
Kingsfordweg 241 | 1043 GR Amsterdam | the Netherlands
t +31 20 34 20 250 | **f** +31 20 34 20 259 | info@escrow4all.com | www.escrow4all.com