

## TERMS AND CONDITIONS

### 1 INTRODUCTION

- 1.1 KE-works is a developer of software products and provides related services. KE-works has developed the KE-chain platform. All intellectual property rights related to KE-chain shall remain exclusively vested in KE-works, its licensors or its own suppliers.
- 1.2 The Client intends to use the KE-chain platform. The Client therefore desires to obtain an end-user subscription to the Software and KE-works desires to provide an end-user subscription of the Software to the Client, on terms and conditions set forth herein.
- 1.3 Therefore, the parties have reached an End-User Subscription Agreement (the "**Agreement**") under the following Terms and Conditions. The scope of the Software and Services provided to the Client and the fees are specified on the Signature page and Appendices of the Agreement.

### 2 DEFINITIONS

- 2.1 "**As-A-Service**" shall mean delivery of the Software as Software-as-a-Service (SaaS) using telecommunication facilities (online).
- 2.2 "**Documentation**" shall mean the manuals or other written materials related to the Software prepared by or on behalf of KE-works. KE-works shall decide on the format and language.
- 2.3 "**Effective Date**" shall mean the date when the Agreement is signed by both parties.
- 2.4 "**Services**" shall mean services as described in section 1.1 and referred to in section 1.3.
- 2.5 "**Software**" shall mean the Software as described in section 1.1 and referred to in section 1.3.
- 2.6 "**Use**" shall mean the use of the Software by Users.
- 2.7 "**User**" shall mean the person or system that Uses the Software.

### 3 SUBSCRIPTION

- 3.1 Subject to the terms in this Agreement, KE-works grants a subscription for Client to Use the Software.
- 3.2 KE-works will provide the Client with Use of the Software As-A-Service. KE-works will provide the Client with access to the Documentation.
- 3.3 KE-works will provide the Software As-A-Service, providing hosting services, maintenance and update services and online support services to the Client.
- 3.4 Unless otherwise agreed, KE-works will provide the Client with access to the Software and Services within three (3) business days from KE-works' receipt of Client's payment of the agreed initial payment.
- 3.5 The fee agreed between the Parties shall be due on the first day of each term.

### 4 SUBSCRIPTION RESTRICTIONS

- 4.1 The subscription for the Use of the Software shall in all cases be non-exclusive, non-transferable and non-sublicensable.
- 4.2 The subscription to the Client shall solely extend to the so-called Software Object Code. Client's right of use shall not extend to the Software Source Code. The Software Source Code and the Technical Documentation on the development of the Software shall not be made available to Client under any circumstances.
- 4.3 KE-works shall not be obliged to provide any software or module or program or data libraries or services other than those agreed, even if these are required for the use of the software.
- 4.4 Client shall only be permitted to use the Software within and on behalf of its own company or organization and only for the intended use. Client shall not use the Software to process data on behalf of third Parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
- 4.5 The permitted Users are employees and systems of the Client, subcontractors, suppliers, alliance parties or customers of the Client.
- 4.6 Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the Software, the media on which the Software is stored and the certificates of authenticity issued by KE-works on provision of the Software, or to make these available to third Parties in any way or for any purpose.
- 4.7 Under no circumstances shall Client remove or circumvent technical provisions intended to protect the Software, or arrange for this to be carried out.
- 4.8 The Software includes software from third parties; the (subscription) terms imposed by such third parties in relation to the Software shall apply, provided that KE-works has notified Client of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. Client accepts the abovementioned terms imposed by third parties. These terms shall be available to Client for inspection and KE-works shall provide Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between Client and KE-works are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of this Agreement shall apply in full.

### 5 DUTIES OF THE CLIENT

- 5.1 Client will provide reasonable support to its Users who have access to the Software including, but not limited to, helping with responding to questions regarding the proper use of the Software, screening

suspected errors prior to contacting KE-works. Client's Users shall be instructed to direct their questions only to Client, and KE-works shall have no obligation to provide any support to such Users.

- 5.2 Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input by Client in the Software to be made and kept available to Client within the context of As-A-Service Provision are met.
- 5.3 Without prejudice, full responsibility for the data processed through the use of the Software by Client shall rest with Client. Client shall guarantee KE-works that the data is not illegal and does not infringe the rights of third parties. Client shall indemnify KE-works against claims by third parties, of whatever nature, in relation to the processing of this data or the execution of the agreement.
- 5.4 Pursuant to legislation in respect of the processing of personal data (such as the General Data Protection Regulation), Client has obligations vis-à-vis third parties, such as an obligation to provide information, and an obligation to allow the inspection, correction and removal of personal data of parties involved. Client is fully and exclusively responsible for ensuring compliance with these obligations. The parties agree that, with regard to the processing of personal data, KE-works is the 'processor' or "sub-processor" within the meaning of the General Data Protection Regulation. KE-works shall, as far as technically possible, lend its cooperation in respect of the obligations to be met by Client. The costs associated with such cooperation are not included in KE-works' agreed prices and fees and shall be borne in full by Client.
- 5.5 Client shall strictly observe the restrictions on the right of use of the Software agreed between the Parties at all times. Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with KE-works and an infringement of the intellectual property rights in respect of the Software. The agreed restrictions on use may relate to any quantitative or qualitative restriction.
- 5.6 Upon request, Client shall immediately fully cooperate to any investigations to be conducted by or on behalf of KE-works in relation to Client's compliance with the agreed restrictions on use. At the first request of KE-works, Client shall grant KE-works access to its buildings and systems. KE-works shall maintain the confidentiality of all company information to be regarded as confidential that KE-works obtains from or on the premises of Client within the context of this type of investigation, in so far as this information does not relate to the use of the Software itself.

## 6 PROCESSING PERSONAL DATA

- 6.1 In case through using As-A-Service Software personal data -as defined in General Data Protection Regulation (hereafter referred to as Privacy Legislation) will be processed, the following

paragraphs of this article apply and are deemed a basic data processing agreement in accordance with the Privacy Legislation.

- 6.2 KE-works will in the context of the execution of an Agreement process personal data on behalf and in accordance with instructions of Client. Therefore, KE-works is not allowed to process personal data and/or track end users for its own purposes. KE-works will insofar possible follow up the directions of Client regarding the processing of personal data of Client. The costs of following up directions of Client are borne by Client. In case to the opinion of KE-works an instruction is not in accordance with Privacy Legislation, KE-works will notify Client.
- 6.3 KE-works takes appropriate technical and organizational measures to secure the personal data against any illegal processing. These measures warrant, taking the current state of technology and the costs of implementing those measures into account, an adequate level of protection, considering the risks of processing, and the nature of, the personal data. The measures are also aimed at preventing unnecessary processing of personal data. The aforementioned technical and organizational measures only regard the processing of personal data in the core of the Software, such as personal data regarding users of Client. KE-works does not know what sort of (personal) data a Client process outside the core of the Software, for instance in case Client developed its own application on top of the aforementioned core. In case Client developed its own application on top of the aforementioned core, it is the responsibility of Client to implement adequate business rules and/or take technical and organizational measures to secure the personal data processed outside of the core of the Software. See for more information the transparency statement regarding processing personal data: [www.ke-chain.com/transparency](http://www.ke-chain.com/transparency)
- 6.4 Client is for the duration of this agreement allowed to audit the aforementioned measures, which audit can be executed by Client an independent third party. KE-works hereby warrants to cooperate with such an audit, provided that: (i) the costs for the audit itself are borne by Client; (ii) the costs and/or time of KE-works regarding the cooperation (including time of staff), are borne by Client; (iii) the audit is not executed more than once a calendar year; (iv) there is a valid reason for the audit, such as loss of data; and (v) the scope of the audit is provided by Client and the audit is limited to the aforementioned scope. Points (iii), (iv) and (v) do not apply in case the audit is due to investigation of a supervisory authority.
- 6.5 KE-works is allowed to use a sub-contractor in the process of rendering its services. KE-works is and remains responsible for the acts and/or omissions of the sub-contractor regarding the processing of personal data. KE-works will notify Client in case of a new intended sub-contractor in case the sub-contractor is involved with processing, or has access to, personal data. In case Client is not agreement

with the new intended sub-contractor, Client is entitled to terminate this agreement with immediate effect.

- 6.6 KE-works hereby warrants that it will not process any personal data outside of the E.U. or E.E.R.
- 6.7 In case KE-works learns or suspects, that personal data of Client is compromised (e.g. due to a security breach or data leak), or has been compromised, KE-works immediately notifies Client, as soon as possible. KE-works supports Client and/or Client in case the security breach and/or data leak must be notified to supervisory authorities and/or data subjects (e.g. End Users).
- 6.8 It is the responsibility of Client to liberate its data prior to termination of the Agreement. Client is able to do so using standard export functionality and/or the standard API. Upon request of Client KE-works is willing to support Client. The costs associated with such support are not included in KE-works' agreed prices and fees and shall be borne in full by Client. After actual termination of the Agreement, KE-works will destroy the data related to the subscription of Client.

## 7 WARRANTY

- 7.1 KE-works warrants that the Software will conform to the Documentation at the time the Software is delivered to the Client and for a period of ninety (90) days thereafter.
- 7.2 KE-works shall not guarantee that the Software will be suitable for the actual and/or envisaged use by Client. KE-works shall also not guarantee that the Software will operate with no interruptions, errors or other defects or that all errors and defects will always be fixed.
- 7.3 Should the Software fail to meet the warranty set forth above, Client should provide KE-works a written notice within the ninety-day (90) day period. KE-works will then, at its sole option, either return the Client the Initial Fee paid by Client and terminate the Agreement, or correct the problem such that the Software conforms to its Documentation.
- 7.4 Under no circumstances shall KE-works be obliged to recover scrambled or lost data.

## 8 LIABILITY AND INDEMNIFICATION

- 8.1 Each party agrees that regardless of the form of any claim, each party's sole remedy and sole obligations shall be governed by this agreement, and (a) in no event shall either party's liability, including any indemnifications hereunder, exceed the amount paid in preceding six months or payable by Client under this agreement including consultancy services directly related to the Software, and (b) in no event shall either party be liable for any consequential, incidental, punitive or special damages arising from breach of warranty, breach of contract, negligence, or any other legal theory, whether in tort or contract, even if such party has

been apprised of the likelihood of such damages occurring, including without limitation damages from interruption of business, loss of profits or business opportunities, loss of use of software, loss of data, cost of recreating data, cost of capital, cost of any substitute software, or losses caused by delay. The foregoing limitations shall not apply to liability resulting from willful intent or conscious recklessness on the part of either party. KE-works shall not be responsible for any damages or expenses resulting from alteration or unauthorized use of the Software, or from the unintended and unforeseen results obtained by Client resulting from such use. Termination of this Agreement pursuant to its various termination terms alone, in the absence of a breach of contract or other act resulting in liability, shall not result in liability of KE-works to Client for damage, loss or expense, and Client expressly waives such claims.

- 8.2 KE-works shall, at its cost, defend and indemnify Client from any and all claims of loss or liability, including attorney's fees and costs or, at KE-works' sole option, settle any claim or suit brought against Client on the issue that the Software infringes any third party copyright, provided that Client (a) notifies KE-works promptly in writing of any such claim or suit; (b) gives KE-works full information and assistance as reasonably requested by KE-works in settling and/or defending the suit; and (c) gives KE-works full authority and control of the defense and/or settlement of any such action. KE-works shall not be liable for any costs or expenses incurred (i) by Client without KE-works' prior written authorization; (ii) for any claim based on the use of a combination of the Software with any other software not provided by KE-works, (iii) for any claim based on Client's modification of the Software; (iv) from use of other than the latest available version of the Software; or (v) use of the Software other than as permitted under the terms of this Agreement. If the Software become subject to a claim of infringement for which KE-works may become liable, KE-works may at its option (a) obtain the right for Client to continue using the Software; (b) replace or modify the Software to make them non-infringing, so long as the replacement or modification meets substantially similar specifications; or (c) terminate this Agreement and refund to Client the subscription fees paid under this Agreement. Except for these obligations and remedies in section 7.2, KE-works shall have no liability to Client or its users for copyright infringement, and shall in no instance have any liability to Client for direct, indirect or consequential damages from infringement.
- 8.3 KE-works does not guarantee, warrant or offer any patent protection to Client on the Software and KE-works shall not be obligated, liable, or in any way responsible to Client because of any alleged or actual violation of patent rights. KE-works does represent that to the best of its knowledge, as of the date of this Agreement, the Software is not infringing on any third party patent. KE-works

represents and warrants that it has not been and is not currently involved in defending any patent infringement claims, related to the Software.

- 8.4 Client shall indemnify and defend KE-works from any and all claims of loss or liability, including reasonable attorney's fees and costs, arising out of or connected with Client's use and distribution of the Software.

## 9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All intellectual property rights, including, but not limited to the Software, customizations to the Software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to Client on the basis of the Agreement shall remain exclusively vested in KE-works, its licensors or its own suppliers. Client shall only acquire those rights of use that are explicitly granted in this Agreement and by law.
- 9.2 The intellectual property rights related to, amongst others, the deliverables, data and reports that Client creates with the Software will never be transferred and belong to Client.
- 9.3 The intellectual property rights related to, amongst others, the deliverables, data and reports that KE-works creates based on consultancy services for the Client, and that are indicated as intellectual property of the Client, will be transferred and belong to Client after payment has been received in full by KE-works. All other intellectual property rights KE-works creates based on the consultancy services will never be transferred and belong to KE-works.
- 9.4 KE-works has the right to retrieve and use data on use of the Software, such as; performance, usage, or any other usage meta data. KE-works may limit the use of the Software according to the limits in the Agreement.
- 9.5 Client agrees to be identified as a customer of KE-works and Client agrees that KE-works may refer to Client by name, trade name and trademark, if applicable, and may briefly describe Client's business in KE-works' marketing materials and web site. KE-works shall comply with Client's trademark guidelines provided to it by Client from time to time, and KE-works shall promptly discontinue any use of Client's name, trade name and trademark upon Client's written request.

## 10 CONFIDENTIALITY

- 10.1 Client acknowledges that the Software is of a confidential nature and that this Software contains trade secrets of KE-works, its own suppliers and/or the software manufacturer.
- 10.2 In accordance with the provisions set forth in above KE-works shall not disclose to Third Parties any information regarding Client's business and/or practice of business that may have become

available to KE-works in connection to this Agreement, except for information that may be reasonably assumed to be of common knowledge or accessible to the public.

- 10.3 The provisions set forth in this Section shall remain in full force and effect in the event of termination of this Agreement, irrespective of the causes thereof.
- 10.4 Notwithstanding anything else herein, the parties may disclose information that is covered by an obligation of confidentiality under this Agreement (a) to their own legal and/or financial advisers who are bound by a written confidentiality agreement, for the purpose of obtaining legal or financial advice relating to this Agreement, or (b) as required by law in a legal proceeding. In the event that a party is required to disclose this Agreement in a legal proceeding, such party will take reasonable steps to obtain protective treatment of the information to maintain its confidentiality, and where legally permitted will give the other party prior written notice of the required disclosure in sufficient time to enable the other party to seek protective treatment.
- 10.5 Except as expressed set forth herein, the parties agree not to disclose the terms and conditions of this Agreement to third parties.

## 11 TERMINATION

- 11.1 The Agreement shall come into force on the Effective Date. The first term of the Agreement, if not otherwise agreed in writing, regarding the provision of the Software has been entered into for the term of one (1) year. Thereafter, the Agreement shall automatically renew of additional one (1) year terms, unless or until a party gives the other party written notice of their desire to terminate this Agreement at the end of the current term. Notice of a party's desire to terminate this Agreement shall be given at least one (1) month prior to the end of the term in question. KE-works shall notify the Client at least one (1) month prior to the end of the term in question.
- 11.2 The Agreement may be terminated by either party if the other party commits a material breach and fails to cure such breach within thirty (30) calendar days following receipt of written notice identifying the alleged material breach. Failure to make any payment in accordance with this Agreement constitutes a material breach of this Agreement if left uncured more than fifteen (15) days following receipt of written notice. Notwithstanding the foregoing, KE-works may terminate this Agreement immediately in the event of a material breach by Client of its obligations under Section 3 (Subscription), 4 (Subscription restrictions) or 9 (Confidentiality).
- 11.3 Client agrees that upon expiration or termination of this Agreement, KE-works is discharged from any further obligations under this Agreement and Client's subscriptions under this Agreement shall cease as of the date of such expiration or

termination except as follows: Within thirty (30) days of the delivery by KE-works or receipt by KE-works of a notice of termination at the end of any term or expiration, or within ten (10) days after termination for cause, Client shall: (1) destroy all copies of the Software in whatever form they exist, including deleting all copies from any electronic memories; (2) destroy all materials and electronic files containing such trade secret or Confidential Information. Upon KE-works' request, Client shall further certify in writing that Client has complied with this provision with respect to destroying, deleting and removing Software and Confidential Information. After thirty (30) days after termination KE-works may destroy all copies of the Software used by the Client, including deleting all copies from any electronic memories.

- 11.4 All requirements of payment, and terms to use and protection of intellectual property and section 7, section 9, section 10, and section 12.3, shall survive termination or expiration of this Agreement. KE-works shall be entitled to pursue all available remedies against Client for breach of the Agreement or damages caused by Client.

## 12 ASSIGNMENT

- 12.1 Except as expressly provided herein, the rights granted herein to Client are personal, nontransferable, and non-assignable in whole or in part unless prior written consent is received from KE-works, which consent shall not be unreasonable withheld.
- 12.2 Neither party shall be entitled to assign nor transfer all or any of its rights, benefits and obligations under this Agreement without the prior written consent of the other party. However, KE-works shall be entitled to assign this Agreement to an entity owned wholly or partially by KE-works.

## 13 COMPLIANCE

- 13.1 Client agrees that Client will comply with all applicable laws and regulations with respect to the Software, including without limitation all export and re-export control laws and regulations. Each party commits that it will not engage in deceptive, misleading or unethical practices, will conduct business in a manner which reflects favorably at all times on the Software and on the good name, goodwill and reputation of the other party, and will not knowingly make any false or misleading representations with regard to the Software or the other party. It is agreed that if any provision, or part of a provision, of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, then the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the original provision and to allow the parties to have the intended benefit of their bargain. If it cannot be so reformed it shall be omitted. The balance of this Agreement shall

remain valid and unchanged and in full force and effect.

## 14 SUBSCRIPTION FEE AND PAYMENT

- 14.1 The fees can be subject to revision at the start of a new term. KE-works shall notify the Client at least one (1) month prior to the end of the term in question.
- 14.2 The Licensee should report to KE-works when the number of users exceed the number of currently paid for. The new subscription fee should be paid from the start of the following month, less a pro-rata refund of the unused part of the existing subscription fee.
- 14.3 If not otherwise agreed, the payment term is thirty (30) days. If Licensee fails to make any payment by the applicable due date, then KE-works shall be entitled to the payment of interest on the sum due at an annual rate based on the statutory interest for commercial transactions from the date on which such sum became due until payment is received by KE-works.
- 14.4 If not otherwise agreed, all prices shall be exclusive of Value Added Tax and other levies imposed by the government. All bank charges outside Netherlands are on the account of the Licensee.

## 15 MISCELLANEOUS

- 15.1 This Agreement, inclusive of its Signature page and Appendices, constitutes the parties' complete and exclusive representation of the agreement and shall supersede all prior or contemporaneous agreements and representations, written or oral, concerning its subject matter. No oral or written information given by a party or on such party's behalf shall create a warranty or collateral contract, or in any way increase the scope of this Agreement in any way, and neither party may not rely on any such oral or written information.
- 15.2 All amendments to or changes to this Agreement must be in a writing executed by both parties.
- 15.3 Neither of the Parties shall be obliged to meet any obligations under this Agreement, including any guarantee obligation agreed between the Parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include: (a) situation of force majeure encountered by KE-works' own suppliers, (b) failure by secondary suppliers engaged by KE-works on Client's instructions to duly meet their obligations, (c) the defectiveness of items, hardware, software or materials provided by third parties that KE-works has been instructed to use by Client, (d) government measures, (e) electricity failure, (f) faults affecting the internet, computer network or telecommunication facilities, (g) war, (h) workload, (i) strike action, (j) general transport problems, (k) the unavailability of one or more members of staff.
- 15.4 This Agreement shall be governed by and interpreted in accordance with the Dutch law. The

applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.

- 15.5 Any dispute arising directly or indirectly from this Agreement shall finally be settled by and in conformity with the rules of conciliation and arbitration of the Netherlands Arbitration institute (N.A.I.) in Rotterdam (The Netherlands).
- 15.6 Any notice made in relation to this Agreement shall be sent to the addresses set forth above, or such other address as the intended recipient has previously designated by written notice. The notice shall be sent by a prepaid courier service which requires signature for receipt or by facsimile. A notice shall be deemed to be given when the courier package is signed for at the address; a facsimile shall be deemed to be received upon completion of transmission, as verified by a printout showing satisfactory transmission, except that should a facsimile be sent on a non-business day, receipt shall be deemed to occur on the next business day.
- 15.7 Pending resolution of any dispute, the Parties hereto agree to proceed diligently with the performance of their obligations pursuant to this Agreement.
- 15.8 All correspondence, communication and documentation shall be written in the English or Dutch language.