

# **GENERAL TERMS AND CONDITIONS FOR SUBSCRIPTIONS AND PROFESSIONAL SERVICES**

**KE-works**

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## SECTION 1. GENERAL

### 1.1. Definitions

Capitalised terms in these General Terms and Conditions and/or the Contract, in the singular or plural, will have the meaning as defined in this Clause or any other part applicable between the Parties.

- 1.1.1. *General Terms and Conditions*: these general terms and conditions for subscriptions and professional services.
- 1.1.2. *KE-works*: the private limited liability company “KE-works B.V.”, registered with the Chamber of Commerce under number “50797832”, or any of its affiliated companies that uses these General Terms and Conditions.
- 1.1.3. *Continuing Performance Contract*: a Contract concluded between the Parties, in the context of which KE-works continuously provides one or more services (e.g. SaaS services) to the Customer at agreed prices and rates.
- 1.1.4. *Defect*: when KE-works’ performance substantially fails to meet the specifications explicitly agreed between the Parties. A defect exists only if the Customer can demonstrate it and if KE-works can reproduce it.
- 1.1.5. *Customer Portal*: the online environment where the Customer can access all relevant documentation relating to the services and – if and to the extent possible – purchase services.
- 1.1.6. *Contract Extras*: any work that was not estimated or quoted by KE-works and therefore does not form part of the Contract.
- 1.1.7. *Quotation*: a written offer by KE-works to the Customer for the provision of services or performance of work.
- 1.1.8. *Customer*: other party to the Contract.
- 1.1.9. *Contract*: a contract or further contract between the Parties to which the General Terms and Conditions have been declared applicable.
- 1.1.10. *Parties*: Customer and KE-works collectively.
- 1.1.11. *Business Days*: Monday through Friday, except for public holidays, with 5 May being a public holiday once every five (5) years.
- 1.1.12. *Working Hours*: hours on Business Days between 09.00 and 17.00 Dutch time.

### 1.2. Applicability and formation of the Contract

- 1.2.1. The General Terms and Conditions apply to all Contracts, legal relationships and Quotations with or from KE-works.
- 1.2.2. The applicability of the Customer’s general or specific terms and conditions or purchase conditions is hereby expressly rejected by KE-works. General or specific terms and conditions or purchase conditions of the Customer therefore do not apply. If the Contract is formed through a purchase order, any reference to the Customer’s purchase conditions will not have any effect. If KE-works must upload its invoice to a Customer’s portal for invoicing purposes, and if purchase or other conditions of the Customer must be agreed with, such reference and/or agreement will not have any effect.
- 1.2.3. All Quotations by KE-works are non-binding, unless stated otherwise. If the Quotation and/or offer states a term, the term will only concern the validity of the Quotation and/or offer and will not affect its non-binding nature.
- 1.2.4. Unless expressly agreed otherwise, the Contract between KE-works and the Customer will be concluded through the Customer’s full acceptance of the Quotation. Such full acceptance may take place, among other things, by signing the Quotation.
- 1.2.5. The Contract may also be concluded online, in which case the Customer will enter into a Contract through KE-works’ website or the Customer Portal. In that event, the Contract between the Customer and KE-works will be concluded by going through an online ordering process on KE-works’ website. In the online ordering process, the Customer must indicate that they agree to these General Terms and Conditions by ticking a check box. In such case, the e-mail confirmation and these General Terms and Conditions together form the Contract. As KE-works assumes that the other party to the Contract concluded online acts in the course of a profession or business, the right of withdrawal as meant in Article 6:230o Dutch Civil Code does not apply.

- 1.2.6. In deviation from the above, a Contract may also be formed by entering into a framework agreement to which these General Terms and Conditions apply. Further agreements under that framework agreement are concluded as described in the previous paragraph, or by the Customer confirming an order confirmation.
- 1.2.7. In the event of a conflict between the provisions of these General Terms and Conditions and the Quotation and/or Contract, the specific terms and conditions of the Quotation and/or Contract prevail over the General Terms and Conditions. In the event of any conflict between the provisions of the different Sections of these General Terms and Conditions, the following order of precedence will apply:
1. "Data processing terms and conditions"
  2. "SaaS services"
  3. "Professional Services"
  4. "General"
  5. "Service Level Agreement"

### **1.3. Performance of the Contract**

- 1.3.1. The Customer undertakes towards KE-works to accept the deliveries in accordance with the Contract and provide the necessary cooperation.
- 1.3.2. In connection with the continuity of the work in the context of the performance of the Contract, the Customer will designate one or more contact persons who will act as such for the duration of the work performed by KE-works. The Customer's contact person must have representative authority and power of disposition, the necessary experience, knowledge of the specific subject matter and an understanding of the Customer's desired objectives. If the Customer's contact person does not have the qualifications that may reasonably be expected given the nature of the assignment, KE-works reserves the right to suspend the performance of the Contract, without being obliged to pay any compensation, until the Customer has replaced this person by a person with the proper qualifications.
- 1.3.3. The Customer must provide KE-works with all information and data necessary for the performance of the Contract, including in any event technical data, applications, files, documentation, test data, work descriptions and/or other relevant information, in a timely manner and free of charge. The Customer guarantees the correctness of the above-mentioned materials. The Customer is furthermore responsible for, and accepts the risk of, potential problems and/or claims arising from the content, accuracy, completeness and consistency of all such materials provided by the Customer as referred to above.
- 1.3.4. If information necessary for the performance of the Contract is not made available to KE-works, or is not made available in a timely manner or not in accordance with the agreements, or if the Customer and/or its suppliers fail to meet their obligations in any other way, including but not limited to failing to cooperate sufficiently and/or failing to make a sufficient effort, KE-works will have the right to suspend the performance of its obligations under the Contract without being obliged to pay any compensation. KE-works is entitled to charge any additional costs incurred in this context, including idle hours, to the Customer.
- 1.3.5. All delivery dates stated or to be stated by KE-works at any time are always approximate and are never to be regarded as deadlines. Therefore, the exceeding of delivery periods will in no way result in an attributable failure on the part of KE-works, nor will the Customer in any event be entitled to claim any compensation.
- 1.3.6. Indications of delivery dates are based on the working conditions and timely provision of materials, documents and/or work instructions by the Customer as applicable at the time of conclusion of the Contract. If any delay occurs as a result of changes in the above-mentioned circumstances and/or as a result of the fact that materials, documents and/or work instructions are not provided by the Customer or suppliers used by KE-works or the Customer in a timely manner, the term of delivery will be extended if necessary.
- 1.3.7. If and to the extent that a Contract is entered into for a fixed price, only the work that is part of the Contract will be performed. KE-works reserves the right to issue an additional Quotation in the event of Contract Extras, in which context the relevant work will be performed only after approval by the Customer.

1.3.8. The Customer accepts that as a result of the work resulting from Contract Extras, the agreed or anticipated time of completion of the agreed services and the reciprocal responsibilities of the Customer and KE-works, could be affected. Contract Extras, or a demand for Contract Extras, arising during the performance of the Contract will never constitute a ground for the Customer to terminate or dissolve the Contract.

1.3.9. The Customer acknowledges that assignments given to KE-works may, in some cases, impact compliance with regard to, for example, sector-specific legislation, privacy legislation (GDPR), etc. The Customer must ensure that it complies with, and continues to comply with, the legislation as referred to above. The Customer will indemnify KE-works and its subcontractors, if any, against claims by employees or third parties in the event that the Customer fails to comply, or fails to fully comply, with the legislation as referred to in this Clause.

#### **1.4. Acceptance**

1.4.1. If the Parties agree that the Customer will perform an acceptance test after delivery, the acceptance test will be performed within ten (10) Business Days after the date of delivery. The purpose of the acceptance test is to establish whether the work delivered by KE-works conforms to what was agreed under the Contract.

1.4.2. The acceptance test may concern the delivery of a SaaS Service, graphic designs, services, concepts and documentation, hereinafter referred to as the "Subject of Acceptance". Full acceptance takes place by signing the acceptance form provided by KE-works.

1.4.3. If the Customer so requests, KE-work will assist the Customer during the acceptance test at its then current rates.

1.4.4. In the event of non-acceptance, the Customer will send KE-works a report of the acceptance test within five (5) days after the acceptance test. This report will include any Defects found and will state whether the Subject of Acceptance as a whole functions properly and/or conforms to the agreements.

1.4.5. If KE-works has not received the results of the acceptance test after expiry of the period referred to in this Clause at 1.4.1 plus the period referred to in the previous paragraph, KE-works will deem the Subject of Acceptance to have been accepted.

1.4.6. Minor Defects, which includes Defects that, by their nature and/or number, do not reasonably impede the Subject of Acceptance being put into commercial use, will not be a reason to withhold acceptance.

1.4.7. After receiving the report as referred to in this Clause, KE-works will, to the extent possible, remedy the Defects recorded in the report to the best of its ability. If the Contract was entered into based on a fixed price, the Defects will be remedied free of charge. In all other cases, this work will be charged based on actual costs or based on a Quotation approved by the Customer. After that, KE-works will again offer the Subject of Acceptance to the Customer for testing and approval, in which case Clause 1.4.1 up to and including Clause 1.4.7 will apply.

1.4.8. If the work delivered is accepted by the Customer, the date of signing the acceptance form will be considered the date of acceptance.

1.4.9. If the Customer puts the work delivered into use before acceptance, the date of delivery or the date of putting into use, if this is sooner, will be considered the date of acceptance.

1.4.10. After the Customer has accepted the Subject of Acceptance in full, KE-works will deliver the Subject of Acceptance ready for operation.

1.4.11. By signing the acceptance document, the Customer grants KE-works discharge with regard to all work prior to the acceptance and accepts the work delivered as is. Defects that become evident within three (3) weeks after acceptance will be remedied free of charge if and to the extent that it concerns a Contract based on a fixed price. In all other cases, such Defects will be remedied based on actual costs.

1.4.12. If the Parties have not agreed on an acceptance test, or if the Customer puts the work delivered into use without acceptance, the Customer will accept the Subject of Acceptance in the state it is in at the time of delivery ("as is"), i.e. with all visible and invisible errors and Defects.

1.4.13. If a SaaS service is found to have Defects, Defects will always be remedied free of charge as long as the Contract is in effect, which will take precedence over the provisions of Clause 1.4.11 and 1.4.12 of these General Terms and Conditions.

**1.5. Prices and rates, invoicing and payment**

- 1.5.1. Unless otherwise agreed, all prices and rates are stated in euros, excluding turnover tax and other government-imposed levies.
- 1.5.2. A rush surcharge will apply for services and other work performed outside Working Hours, which surcharge will be laid down in the Contract or, failing which, will be calculated according to the rush rates applicable at that time.
- 1.5.3. KE-works is entitled to increase the prices and rates for its services in the first month of a calendar year. As for Continuing Performance Contracts, KE-works may at least increase its prices and rates in accordance with the most recent services price index (SPI, 2015 = 100, all classification of products by activity (CPA) sections) published by Statistics Netherlands in the current contract year.
- 1.5.4. Suppliers of KE-works may increase their prices and rates during the term of a Contract. In such event, KE-works will be entitled to charge on any increase to the Customer, outside of the agreed indexation of Clause 1.5.3, without requiring the Customer's approval.
- 1.5.5. The Customer must pay all invoices within thirty (30) days after the invoice date, unless otherwise agreed. If the Customer fails to pay within the payment term – after KE-works has demanded payment from the Customer and granted the Customer a reasonable term to still pay – the Customer will be in default, as a result of which all invoices not yet due will become immediately due and payable as well. Furthermore, without any notice of default being required, the Customer will owe the applicable monthly statutory commercial interest on the invoice amount to KE-works. The foregoing is subject to KE-works' right to claim any additional compensation from the Customer, including extrajudicial costs.
- 1.5.6. Any complaints based on allegedly incorrect invoices must be received in writing by KE-works within fourteen (14) days after the invoice date or performance, failing which the right to complain about the invoice in question lapses.
- 1.5.7. If and to the extent that the Contract has the character of a Continuing Performance Contract, KE-works will invoice it annually in advance, unless explicitly agreed otherwise.
- 1.5.8. Services and/or Functionality added to the Contract in the interim, for example because of an interim upgrade to a higher Module, will be invoiced on a pro rata basis until the next invoice date.
- 1.5.9. The Customer agrees that KE-works sends its invoices digitally by e-mail or make these available in the online Customer Portal.
- 1.5.10. If and to the extent that KE-works issued a credit note to the Customer, KE-works will be entitled to set off the credit note against a next invoice in case of a Continuing Performance Contract.
- 1.5.11. Payments by the Customer will be applied to the oldest debt first, even if, as a result of a repayment arrangement or otherwise, the amount of a payment is equal to or related to the amount of later debt. Payments are furthermore firstly deducted from the costs, then from the accrued interest and lastly deducted from the principal sum.
- 1.5.12. If the Customer's creditworthiness gives reason to do so in KE-works' opinion, KE-works may require the Customer to provide security for the payment of future instalments, failing which KE-works will be entitled to suspend the further performance of the work and deliveries assigned to KE-works.

**1.6. Intellectual property rights**

- 1.6.1. All intellectual property rights to software, functionalities, data files or other materials, such as analyses, designs, documentation, reports, quotations and preparatory materials in that regard, that are developed or made available to the Customer under the Contract will vest exclusively in KE-works, its licensors or suppliers. The Customer will only be granted an immediately revocable, non-exclusive, non-transferable and non-sublicensable licence, which entails no more than that the subject of the licence may be used for the purpose for which the license was granted to the Customer by KE-works.
- 1.6.2. The Customer guarantees that no third-party rights oppose the making available to KE-works of material, data files and other materials, including design material, for the purpose of use, processing, installation or incorporation. The Customer indemnifies KE-works against any third-party claim based on the allegation that such making available, use, processing, installation or incorporation violates any right of that third party. This guarantee does not apply to any open

source software used. As regards open source software, the relevant open source licence(s), as they have been made known to the Customer, apply to the Customer. In view of the nature of open source, KE-works cannot guarantee that the open source software does not infringe the rights of third parties.

- 1.6.3. The Parties are allowed to use each other's logo's, trade names and/or brand names to show that KE-works performs work for and/or provides services to the Customer or that the Customer uses the services of KE-works.

## **1.7. Confidentiality**

- 1.7.1. Information and/or documentation is confidential if it is either designated as such by one Party or if the other Party otherwise knows or could suspect that the information and/or documentation is confidential.
- 1.7.2. The Parties, and the employees of the parties, will only use confidential information obtained or made available by the other Party in accordance with the provisions of the Contract and will not provide it directly or indirectly to third parties, or give permission to do so, without the prior written permission of the other Party. The Parties, including employees of the Parties, will furthermore take all the necessary precautions to protect such information against unauthorised use and disclosure.
- 1.7.3. The provisions of this Clause do not apply if a Party is required to disclose confidential information pursuant to a court decision or government decision.
- 1.7.4. The Parties are obliged to take measures to prevent unauthorised persons from accessing, or being able to access, the services and data. Except in the event of an intentional act or omission or deliberate recklessness on the part of KE-works' management, KE-works cannot be held liable for damage or loss incurred by the Customer as a result of third parties making unauthorised or unlawful use of items, Software and/or service(s) delivered.
- 1.7.5. The Parties will keep all confidential information, or information that can be assumed to be confidential, confidential towards third parties even after termination of the Contract. The Parties will furthermore ensure that the above-mentioned confidential Information will be destroyed without delay after termination of the Contract. At the first request of one of the parties, the Customer will demonstrate that this was actually done.
- 1.7.6. The provisions in the preceding paragraphs of this Clause apply *mutatis mutandis* to the period prior to the conclusion of the Contract.
- 1.7.7. During the term of the Contract and for a period of one year after the end of the Contract, the Parties may only employ employees of the other Party who are or were involved in the performance of the Contract or otherwise engage such employees to perform work on their behalf, whether directly or indirectly, with the prior written permission of the other Party. This permission may be subjected to conditions.

## **1.8. Assignment of rights and obligations, subcontracting**

- 1.8.1. The Customer is not entitled to assign rights and obligations to third parties affiliated with the Customer as meant in Article 2:24 Dutch Civil Code without the prior written permission of KE-works. KE-works may not refuse this permission on unreasonable grounds.
- 1.8.2. KE-works is entitled to use third parties in the performance of its obligations under the Contract, regardless of whether this is done on the basis of subcontracting or hiring personnel. In doing so, KE-works will pass on the duty of confidentiality as stipulated in the preceding Clause to these third parties.
- 1.8.3. KE-works is entitled to assign all rights and obligations acquired in the context of the Contract to third parties without any additional restrictions. It will inform the Customer of this as soon as possible. If such rights and obligations are assigned to a non-affiliated party and the Customer has serious objections to the assignment, the Customer will be entitled to terminate the Contract in accordance with Clause 1.10.3 or Clause 1.10.4.

## **1.9. Liability and force majeure**

- 1.9.1. The total liability of KE-works by virtue of an attributable failure to perform the Contract or by any other virtue, e.g. an unlawful act, which is expressly understood to include any failure to perform a guarantee obligation agreed with the Customer and indemnities, is limited to

compensation for direct loss up to a maximum of 100% (hundred percent) of the amount of the price, excluding VAT, stipulated for the relevant Contract and actually paid by the Customer. If the Contract is mainly a Continuing Performance Contract, the total liability for direct loss as referred to in the previous sentence is limited to the amount, excluding VAT, charged to the Customer by KE-works in the context of the relevant Contract and actually paid by the Customer in the three (3) months preceding the event causing the loss. In this context, a series of consecutive loss-causing events will be considered one (1) event.

1.9.2. KE-works will never be liable for indirect loss, consequential loss, lost profits, missed savings, reduced goodwill, loss due to delay, loss due to loss of data, loss due to business interruption, loss as a result of claims from the Customer's customers, loss relating to the use of the items, work methods, materials or software of third parties prescribed to KE-works by the Customer and loss relating to the engagement of suppliers prescribed by the Customer to KE-works. KE-works' liability due corruption, destruction or loss of data or documents is also excluded.

1.9.3. All exclusions and restrictions referred to above will cease to apply if and in so far as the loss is the result of intent or deliberate recklessness on the part of KE-works' management.

1.9.4. Unless KE-works is permanently unable to perform, KE-works' liability for an attributable failure to perform the Contract will only arise if the Customer immediately declares KE-works to be in default in writing, setting a reasonable term for remedying the failure, and KE-works continues to fail attributable in the performance of its obligations even after that term. The notice of default must contain a description of the failure that is as complete and detailed as possible, so that KE-works is given the opportunity to respond adequately.

#### **1.10. Term and termination**

1.10.1. The Contract will enter into effect when the Parties have entered into a Contract pursuant to Clause 1.2.4, unless otherwise agreed in the Contract. If the Contract is not a Continuing Performance Contract, the Contract ends as soon as the mutual obligations of both Parties in the context of the performance of the Contract have been fulfilled. If the Contract is a Continuing Performance Contract, Clause 1.10.3 and Clause 1.10.4 apply.

1.10.2. If and to the extent that the Customer uses a Purchase Order number (hereinafter "PO number"), the Customer will provide such PO number in a timely manner before the time of invoicing. Failure to provide a PO number in a timely manner is and will remain at the Customer's expense and risk. If the PO number is not provided in a timely manner, the invoice without PO number will be valid and binding. If the Customer fails to provide a year and/or project PO number, or fails to do so in a timely manner, KE-works will not be required to correct its invoice, and this will not suspend the Customer's payment obligation.

1.10.3. A Contract is entered into for the term stated in the relevant Contract. If the Contract does not specify the term, the term will be one (1) year. After the expiry of the term, or renewed term, of the Contract, the Contract will be renewed tacitly, each time for a period equal to the initial term, unless the Customer gives notice of termination of the Contract in writing subject to a notice period of thirty (30) days with effect from the end of the term or renewed term.

1.10.4. If the Contract was entered into for an indefinite period of time, the Customer is entitled to terminate it by registered letter to KE-works or through the Customer Portal, subject to a notice period of thirty (30) days with effect from the end of the agreed period.

1.10.5. Without prejudice to the provisions of the Contract, KE-works will be entitled to dissolve the Contract, in full or in part, by a written statement, with immediate effect and without prior notice of default or notification:

- if the Customer attributable fails to perform one or more of its obligations and/or performance is impossible;
- if it seems plausible to KE-works that the Customer is or will be unable or unwilling to comply with its obligations;
- if the Customer applied for a suspension of payments, is granted a suspension of payments, applied for bankruptcy, is declared bankrupt, proceeds to liquidate its business, ceases its activities, or proves to be insolvent in any way;
- if KE-works suffers damage to their image as a result of the cooperation with the Customer, or if further cooperation with the Customer will result in foreseeable damage to KE-works' image.



- 1.10.6. In the event of dissolution as referred to above, KE-works will never be obliged to pay any form of compensation. The Customer must indemnify KE-works against and hold KE-works harmless with regard to any third-party claims that may arise out of or in connection with the dissolution as referred to in the previous paragraph.
- 1.10.7. In the event of dissolution as referred to in 1.10.5, the Customer will be obliged to immediately compensate all costs already incurred by KE-works, without prejudice to KE-works' right to claim full compensation.
- 1.10.8. If, when a Contract is dissolved, the Parties have already performed and received performance in the performance of the Contract, this performance and the related payment obligations will not be subject to reversal, regardless of the reason for dissolving the Contract, including, among other things, dissolution by the Customer on account of an attributable failure to perform a Contract by KE-works. Invoices sent to the Customer by KE-works will become immediately due and payable at the moment of dissolution.
- 1.10.9. Obligations which by their nature are intended to continue after termination of the Contract will continue to exist. The termination of the Contract will expressly not release the Parties from the provisions regarding confidentiality, intellectual property rights, applicable law and disputes. This also applies in case of termination due to dissolution based on an attributable failure to perform a Contract by KE-works.
- 1.11. Applicable law, competent court and other provisions**
- 1.11.1. All Quotations, Contracts, and agreements arising from Contracts that are subject to these general terms and conditions and all ensuing legal relationships are governed exclusively by Dutch law.
- 1.11.2. Disputes arising from or relating to the Contract will be submitted exclusively to the competent court of ROTTERDAM. This does not apply if the dispute falls within the jurisdiction of the Subdistrict Court Judge. In such event, the statutory provisions regarding subject matter and territorial jurisdiction will prevail, so that a Subdistrict Court Judge will have jurisdiction to hear the dispute.
- 1.11.3. Furthermore, in urgent cases, the Parties may turn to the Preliminary Relief Judge of the competent District Court to render a judgment in preliminary relief proceedings, or turn to the competent District Court to take precautionary measures.
- 1.11.4. If and to the extent that a provision of these General Terms and Conditions is nullified or declared null and void, the other provisions will remain in full force between the Parties. In such event, the Parties will agree on a new provision, taking the null and void or nullified provision into consideration as much as possible.
- 1.11.5. Where these General Terms and Conditions refer to "in writing", this also includes electronic messages such as e-mail and fax, unless reference is made to a registered letter, in which case it refers to an actual letter sent by registered post.

## SECTION 2. PROVISION OF SAAS SERVICE(S)

### 2.1. Additional definitions

In addition to the other sections, the following capitalised terms in the General Terms and Conditions and/or Contract, whether in the singular or plural, will have the meaning as defined in this Clause.

- 2.1.1. *Subscription*: the subscription for the use of the Functionality.
- 2.1.2. *EUA*: End User Agreement, i.e. End User Terms and Conditions – if and to the extent applicable – which the User must respect when using the SaaS Service.
- 2.1.3. *Functionality*: all possibilities and functions of the SaaS Service.
- 2.1.4. *User*: a person affiliated to the Customer (e.g. an employee or temporary worker) who uses the Functionality.
- 2.1.5. *Custom Work*: Functionality specifically developed by KE-works at the Customer's request.
- 2.1.6. *Module*: the agreed module for the SaaS Service.
- 2.1.7. *Roadmap*: a planning by KE-works which describes what future Functionality will be added to the SaaS Service as a Standard Functionality.
- 2.1.8. *SaaS Service*: a service, currently named KE-chain, in the context of which KE-works makes functionality of software available to the Customer and Users attributable to the Customer via the internet, where the Customer will not acquire a data carrier containing the software underlying the functionality and where "SaaS" in this case means "Software as a Service".
- 2.1.9. *Standard Functionality*: the Functionality offered by KE-works – within a Module – as a standard.
- 2.1.10. *Service Fee*: the monthly fee, excluding VAT, paid by the Customer for the Subscription or, in the event that the fee is not charged on a monthly basis, the amount, excluding VAT, divided by the number of months for which the amount was paid.
- 2.1.11. *Support*: the provision of information or advice by KE-works by e-mail and/or through a website or help desk, depending on the Service Level agreed in the Contract, regarding the use of Functionality and the provision of assistance in identifying the causes, including Defects, that impede the unhindered use of Functionality and/or the SaaS Service and in solving these problems.

### 2.2. Work prior to the provision of the SaaS Service

- 2.2.1. Before the SaaS Service can actually be provided, the Customer must provide KE-works with requirements and wishes regarding the installation and configuration of the SaaS Service. KE-works will perform the installation and configuration only in the manner explicitly agreed on in the Contract in writing.
- 2.2.2. After this has been established as described in the previous paragraph, KE-works will commence all work necessary to actually provide the SaaS Service, for example installing and configuring the underlying Standard Functionality or, if agreed upon, developing Custom Work. The KE works employees have limited access to the Customer Environment in the SaaS service based on the need-to-know principle. Access will be granted only if access to the SaaS Service is actually required to perform the work. When the authorisations of individuals change, access to the SaaS Service will be adjusted accordingly.
- 2.2.3. KE-works will not be obliged to install or configure the SaaS Service in such way that it interacts with or is or remains linked to other existing or new software or systems of the Customer or third parties, unless it was explicitly agreed in writing that KE-works will realise the interface in question as part of the configurations to be carried out for the SaaS Service to be provided.
- 2.2.4. If KE-works applies settings or configurations, this will be done based on a best efforts obligation to ensure that the SaaS Service matches the Customer's relevant company-specific wishes and requirements as closely as possible within the specified wishes and within the available configuration options of the SaaS Service. When choosing to use the SaaS Service for a specific business activity, the Customer is ultimately responsible for ensuring that it functionally aligns with the Customer's specific business requirements, and the Customer must proactively and in cooperation with KE-works provide the functional input for this to ensure that the SaaS Service can support the Customer's specific business needs as effectively as possible.
- 2.2.5. If, as part of the Contract, KE-works will prepare the settings and configurations as referred to in this Clause on behalf of the Customer, the specifications will remain at the Customer's risk. KE-

works will not commence the agreed work until the Customer has approved the requirements and wishes regarding the settings.

### **2.3. Provision of SaaS Service**

- 2.3.1. The SaaS Service includes training material, support, hosting, backups, maintenance and updates. The SaaS Service will be provided in accordance with the SLA (SECTION 5).
- 2.3.2. The Customer is not allowed to use the SaaS Service in such way that it could harm or result in damage to the SaaS Service and/or third parties, or that could disrupt the availability of the SaaS Service.
- 2.3.3. KE-works offers its SaaS Service based on “fair use”, meaning that, in principle, it will not impose any restrictions on the Customer regarding system and network load. Nevertheless, KE-works reserves the right to take measures in the event of excessive use, i.e. use that is significantly higher than that of the average Customer of KE-works. In the event of a structurally excessive system and/or network load, the Parties will consult about possible solutions and/or changes and the associated costs. The exceeding of agreed Modules, interfaces, quantities, such as Users and teams is not subject to the aforementioned “fair use” provision. These excesses will be subject to the agreed prices and rates.
- 2.3.4. If and in so far as relevant, when the User uses the SaaS Service for the first time, they will be presented with the applicable EUA, which the User must follow at all times.
- 2.3.5. KE-works is entitled to unilaterally amend the EUA. If the EUA is amended, it will again be presented to the User using the SaaS Service.
- 2.3.6. The Customer will ensure that Users handle the log-in details provided to Users by KE-works, as well as those provided by the Customer itself, with due care. To that end, the Customer will implement an adequate access policy, where log-in details are handled with the utmost care. If the Customer suspects that unwanted third parties have access to account details that give access to the SaaS Service, the Customer must inform KE-works of this immediately.
- 2.3.7. Because the SaaS Service is an internet-based solution, the Customer is responsible for making timely provisions, such as selecting, acquiring, installing and configuring suitable telecommunications facilities, software (e.g. prescribed browsers), equipment and infrastructure to actually use the SaaS Service. KE-works is therefore not responsible for unavailability of the SaaS Service as a result of defects in the Customer’s network used or other provisions as referred to above. KE-works is not responsible for costs associated with the above-mentioned provisions, such as purchase, use and data or mobile data consumption.
- 2.3.8. If the Customer or a User of the Customer can send out matters to third parties by means of the Functionality, the Customer will be responsible for ensuring that the required permissions and/or legal bases are in place to be allowed to do so.
- 2.3.9. Although, in principle, the SaaS Service complies with the relevant national and EU legislation applicable to KE-works as ICT supplier, KE-works cannot guarantee that the SaaS Service at all times complies with the relevant laws and regulations. For example, in the event that several new relevant laws or regulations are introduced at the same time, it may happen that not everything can be realised in time. Although changes in relevant laws and regulations will always be included in the Roadmap as new Standard Functionality, and will therefore be implemented free of charge, KE-works may, in the event of a significant concurrence of new laws and regulations, request the Customer to provide a financial contribution for the adjustments to, or the development of, functionality in this regard. The Customer will periodically, or if circumstances so require as soon as possible, report changes in relevant laws and regulations that may affect the performance of the Contract.
- 2.3.10. The Customer will indemnify KE-works against losses arising from, or third-party claims based on, acts of the Customer that are contrary to Clause 2.3.2 up to and including Clause 2.3.7.

### **2.4. Roadmap and Release Policy**

- 2.4.1. Defects in the Standard Functionality will always be remedied without additional costs.
- 2.4.2. KE-works will determine the release policy independently and without consulting the Customer, and will ensure, to the extent possible, that the most recent Standard Functionality within the agreed Module is available to the Customer.

2.4.3. If the Customer desires functionality that is not available as Standard Functionality and therefore cannot be provided by KE-works as Standard Functionality, and the desired functionality is in the Roadmap, or KE-works is inclined to include it in the Roadmap, KE-works will provide such desired functionality as Standard Functionality as soon as it becomes available. The foregoing does not apply if the desired functionality is available in a different Module, in which case the Customer must purchase an upgrade to a different Module.

2.4.4. KE-works will inform the Customer of updates of and/or other changes to the Functionality prior to their implementation to the extent possible if these are expected to entail a loss of performance of the SaaS Service and/or loss of Functionality and/or reduced availability. The above does not apply if the relevant updates must be implemented for urgent security reasons.

## **2.5. Support and Defects**

2.5.1. Support is a standard part of the SaaS Service. Support is provided in accordance with the SLA (SECTION 5) and the agreed Service Level.

2.5.2. If and to the extent that the Customer and/or User experiences or finds Defects, they may only report this to KE-works. Defects may never be communicated to third parties. In this context, the Customer and User must comply with KE-works' responsible disclosure policy.

2.5.3. A Defect will be handled only if and to the extent that it is demonstrable or reproducible.

2.5.4. If and in so far as solving a Defect takes or is suspected to take so much time that KE-works suspects that it will affect the availability of the Functionality, KE will attempt to provide for a temporary, adequate solution.

2.5.5. Defects to and/or unavailability of the SaaS service caused by the following issues never fall under the scope of the Agreement.

- improper use by the User;
- working with devices and/or software or browser software that is not generally accepted and/or do not meet the specifications KE-works approved in advance;
- excessive use within the meaning of Clause 2.3.3

2.5.6. Only after receiving written confirmation from the Customer will KE-works repair the defects referred to in the previous paragraph, if possible, at its prices and rates prevailing at that time

2.5.7. If Users do not have adequate knowledge of the Functionality and/or the SaaS service, KE-works may, in the interest of the Customer and in order for the SaaS service to function optimally, require the Customer to purchase training programmes and/or courses from KE-works in order to bring the Users' knowledge to such a level that they no longer have to rely excessively on Support or so that the Users otherwise gain the required knowledge. KE-works will base the reasonableness of this claim on its Support history.

## **2.6. Intellectual property rights**

2.6.1. All intellectual property rights, including copyrights, trademark rights and patent rights resulting from software developed under the Contract and/or SaaS-service made available to the Customer will accrue to KE-works, its licensors or third-party suppliers. The Customer will only acquire the rights of use specified in these General Terms and Conditions.

2.6.2. KE-works guarantees that it holds all the rights required for providing the SaaS-service, including all rights relating to the underlying software, with the exception of open source software. If and in so far as KE-works uses open source software for the SaaS service, the Customer will be bound by the relevant open source licence(s). If and in so far as the open source licence conflicts with the provisions on intellectual property rights and/or licencing conditions included in these General Terms and Conditions or the Contract, the provisions of the open source license will prevail. Except in the event of an intentional act or omission or deliberate recklessness on the part of KE-works' management, KE-works cannot be held liable for third-party claims regarding infringements of intellectual property rights to open source software used by KE-works. This means that, in view of the nature of open source, KE-works cannot guarantee that the open source software does not infringe third-party rights.

2.6.3. The Customer pays only for the use of the Functionality. The Customer will not obtain a licence but a right of use on the Functionality of the software underlying the SaaS-service. The Customer pays the costs of the Subscription per unit, functionality (modules), or quantity in the manner set out in the Contract. The Customer therefore does not have any rights to computer software,

- whether or not in the form of source code on carriers. The prices and rates for Functionality (Modules), quantities and/or interfaces are stipulated in the Contract.
- 2.6.4. The data the Customer accumulates itself using the SaaS-service will remain the property of the Customer at all times.
- 2.6.5. KE-works is permitted to use aggregated and anonymised data to gain insights, which insights KE-works may share with the community (Customers). KE-works may also use the insights into and about the SaaS service for the continued development of the SaaS.
- 2.6.6. The Customer acknowledges that the Functionality, screens, interfaces, designs, graphic elements and icons that allow the Users to use the Functionality are subject to intellectual property rights within the meaning of Clause 1.6.1 The duty of confidentiality of Clause 1.7 also extends to refraining from printing screen shots etc. of the SaaS service to third parties. In this respect, the Customer must also refrain from making the Functionality or SaaS service public, for example by describing the Functionality or the SaaS service in a tender, survey, market consultation or by otherwise using the user experience regarding the SaaS service.
- 2.7. In the event of termination of the Contract**
- 2.7.1. All rights the Customer acquired pursuant to the Contract with regard to the use of Functionality will lapse if the Contract is terminated.
- 2.7.2. If KE-works continues to provide the SaaS service to the Customer after the termination of the Contract, the SaaS service will be provided at the prices and rates prevailing at that time.

## SECTION 3. DATA PROCESSING TERMS AND CONDITIONS

### 3.1. Scope and purpose limitation

- 3.1.1. The subject of these data processing terms and conditions is to make agreements about the processing of personal data within the meaning of Article 28(3) of the General Data Protection Regulation (GDPR).
- 3.1.2. SECTION 3 constitutes a basic processing agreement. If the Customer desires a separate processing agreement, KE-works will provide its processing agreement if personal data will be processed. If the Customer wishes to use its own processing agreement or enter into negotiations about the processing agreement provided by KE-works, the time involved in concluding a processing agreement may be charged to the Customer.
- 3.1.3. Based on the applicable laws and regulations and in the context of the processing of personal data, the Parties distinguish and recognise the following roles (including the corresponding responsibilities): the Customer is the controller, KE-works is considered a processor, and any third party to be engaged by KE-works to process personal data is a sub-processor.
- 3.1.4. For the purpose of record-keeping and management tasks, KE-works is entitled to include the personal data of the Customer and/or User authorised to perform such tasks in its own records.
- 3.1.5. In the context of the performance of the Contract, KE-works will process the personal data obtained and collected only by order and on the instructions of the Customer and exclusively for the performance of the Contract.
- 3.1.6. In the context of the performance of the agreed work and services as recorded in the Contract, KE-works will process the personal data only for the Customer, in which respect KE-works is not allowed to process the personal data of the Customer for its own purposes, other than those which have been agreed, and/or provide them to third parties.
- 3.1.7. For the purpose of the processing of personal data, KE-works will make the agreed ICT resources and/or software available to the Customer, which resources and/or software the Customer will use for the purpose stated in the Regulation. KE-works is therefore a passive processor. It is the Customer's responsibility to ensure that it deploys or uses the ICT resources referred to above in such a way that the personal data are processed in accordance with the applicable privacy legislation and the legitimate purposes it set in advance.
- 3.1.8. KE-works' privacy statement provides which personal data are processed in the context of its business operations and in the context of the SaaS Service. The privacy statement can be consulted at: <https://ke-chain.com/nl/privacy/>

### 3.2. Confidentiality

- 3.2.1. Both parties will take all reasonable measures in order to guarantee that confidential information remains confidential, in so far as this is possible in connection with the performance of the Contract.
- 3.2.2. With due observance of the provisions of 3.4, KE-works will not provide third parties with the data obtained from the Customer and the personal data to be processed by KE-works, unless the Customer has consented in writing to same or unless required further to the performance of the agreed work, the provision of the agreed services, the performance of a statutory obligation, a request from an authority or a court judgment.
- 3.2.3. If KE-works is requested by a third party to provide data that are subject to the notarial duty of confidentiality, KE-works will verify the basis of the request and the identity of the party making the request and will inform the Customer of the matter immediately, prior to the provision if possible, unless a court order or a court judgment prohibits this notification. KE-works will not provide the requested data unless it has received the Customer's permission or after a final and binding court judgment has been rendered in this regard.
- 3.2.4. KE-works ensures that the data are provided to employees of the Parties exclusively on a need-to-know basis and that only the employees charged with performing the agreed work or providing the services have access to the personal data or are able to process the personal data.

### **3.3. Technical and organisational measures**

- 3.3.1. The Parties must ensure that applicable laws and regulations – in any event including laws and regulations regarding the protection of personal data, such as the General Data Protection Regulation – are complied with correctly.
- 3.3.2. KE-works meets this obligation by maintaining ISO 27001 certification. KE-works is required to maintain ISO 27001 certification, or – if there is a follow-up standard to ISO 27001 – obtain and maintain this follow-up certification during the term of the Processing Agreement.
- 3.3.3. The Customer will implement adequate technical and organisational measures for the part for which it is responsible to protect the personal data against loss and any form of unlawful processing. Such measures will warrant – taking into account the state of the art and the costs of performance – an adequate security level, given the risks posed by the processing and nature of the data to be protected. The measures must also be aimed at preventing the unnecessary collection and further processing of personal data. These include, for example: (i) business processes that comply with the relevant legislation regarding the processing of personal data; (ii) authorisation models whereby employees who have nothing to do with certain data, or only to a limited degree, have no or regulated access to that data (iii); workstation security; (iv) adequate password and access policies. The Customer must also ensure that it pursues an adequate policy regarding private use of its own systems, for example internet and e-mail, in which respect access to data traceable to natural persons will be logged when the systems are used.
- 3.3.4. The Customer must itself determine the extent to which a data protection impact assessment (DPIA) as referred to in Article 35 GDPR is necessary.
- 3.3.5. During the term of the Contract, the Customer has the right to have the measures taken by KE-works referred to above reviewed by an independent expert by means of an audit subject to the following cumulative conditions: (i) the Customer must announce the audit in a timely manner; (ii) the Customer must bear the costs of the audit, including the costs of the independent third party referred to above and the costs for making one or multiple employees of KE-works available who will support the auditor at the hourly rate of the relevant employee(s); and (iii) the result of the audit must be discussed with KE-works.

### **3.4. Third Parties**

- 3.4.1. KE-works may use a sub-processor or sub-sub-processor based on the Customer's general consent, which consent the Customer hereby provides. KE-works will inform the Customer about proposed changes in a timely manner. The Customer may object to the proposed changes. If and in so far as the Parties are unable to resolve the objections together, the Customer will be free to terminate the Contract with effect from the date on which the change will take effect.
- 3.4.2. The list of sub-processors and sub-sub-processors is included in the transparency statement, which can be viewed on KE-works' website: <https://ke-chain.com/nl/privacy/>

- 3.4.3. KE-works is not permitted to transfer personal data to a country outside the EU / EEA without the Customer's consent.
- 3.4.4. If and to the extent possible, KE-works will conclude sub-processor agreements with the aforementioned sub-processors or will reach agreements with these sub-processors regarding confidentiality and compliance with privacy legislation.
- 3.4.5. KE-works cannot guarantee for every sub-processors or sub-sub-processors that the sub-processors or sub-sub-processors will notify KE-works about changes regarding the sub-sub-processors. The requirements of Clauses 3.4.3 and 3.4.4, however, will expressly remain in force.
- 3.4.6. If KE-works engages third parties, KE-works cannot be held liable for an amount that is higher than the amount that it can actually recoup from a third party in the event the loss is attributable to that third party. At the Customer's first request, KE-works will cooperate free of charge in assigning any claim against such a third party regarding the compensation of loss.

### **3.5. Data breaches and rights of data subjects**

- 3.5.1. If KE-works suspects, or has learned, that the Customer's personal data are or were compromised (security breach or a data breach), KE-works will immediately report this to the Customer, but in any event within twenty-four (24) hours. Further to this, the Customer will determine whether it will inform the data subject and/or report the incident to the supervisory authority designated by law. The Customer itself is and will remain responsible for any statutory obligation in this respect. At the Customer's request, KE-works will nevertheless cooperate with the Customer to the extent necessary to enable it to comply with its legal obligations.
- 3.5.2. If a data subject requests KE-works for access, rectification or deletion or if they wish to exercise any other right accruing to them, KE-works will forward that request to the Customer, and the Customer will process the request further. KE-works is allowed to inform the data subject of this. In so far as this is not contrary to any statutory provision, if so requested, KE-works will cooperate with the Customer in the handling and processing of the request.
- 3.5.3. At the Customer's first request: (i) KE-works will provide the information requested by the Customer regarding the processing of the Customer's personal data; and (ii) KE-works will cooperate with the Customer – if and to the extent necessary – to perform the Customer's obligations under the applicable laws and regulations regarding the processing of personal data.

### **3.6. Other provisions**

- 3.6.1. If and in so far as KE-works attributably fails in the performance of these data processing terms and conditions or fails to comply with relevant legislation regarding the processing of personal data, KE-works' liability for the related loss will be limited to the amount agreed in Clause 1.9 of these General Terms and Conditions regarding the limitation of liability. If the occurrence of the loss can be attributed to a third party as referred to in Clause 3.4, then KE-works' liability will be limited to the amount which KE-works actually recovered from that third party. At the Customer's first request, KE-works will cooperate in assigning a claim against the aforementioned third party with regard to the loss.
- 3.6.2. These data processing terms and conditions are in force as long as KE-works performs work and/or services for the Customer. After expiry or termination, KE-works will destroy the Customer's personal data, or, if the Customer requests this, provide the personal data to the Customer before the personal data are destroyed. At the Customer's first request, KE-works will provide a statement that the personal data have been destroyed.
- 3.6.3. The obligations ensuing from these data processing terms and conditions also apply to affiliated third parties, subsidiaries and/or branches of the parties.

## SECTION 4. PROFESSIONAL SERVICES

### 4.1. Additional definitions

In addition to the other sections, the following capitalised terms in the General Terms and Conditions and/or Contract, whether in the singular or plural, will have the meaning as defined in this Clause.

- 4.1.1. *Escrow*: SaaS continuity scheme for registered Customers, whereby a third party has acquired sufficient rights – in the event of discontinuity on the part of KE-works – to be able to achieve and/or guarantee that the functionality and availability of the data to be accessed with that functionality remain continuously available to the Customer.
- 4.1.2. *Training Course*: an engagement pursuant to which the Customer gives a group of employees the opportunity to take a training course about the SaaS Service.
- 4.1.3. *Workshop*: an engagement pursuant to which the Customer gives participants the opportunity to arrive at insights about the results of the SaaS Service in an interactive manner, in order to prompt organisational changes or improvements..
- 4.1.4. *Implementation*: an engagement pursuant to which the Customer will receive support during the configuration of the KE-chain SaaS Service for the Customer's own business processes, consisting of implementing, configuring, setting up, adjusting, parameterising and preparing the software and/or websites for putting it in operation and familiarising the User with the Functionality, not being a Training or Workshop.
- 4.1.5. *Advice*: an engagement pursuant to which the KE-work provides advise to the Customer about integrating the SaaS Service in the Costumer's business processes.

### 4.2. Additional Services

- 4.2.1. In addition to the SaaS Service, the Customer can also purchase the following additional services: Advice, Implementation, Workshops, Training Courses, Escrow. The Contract and/or the Quotation show which additional services are purchased and subject to which conditions.

### 4.3. Advice and Implementation

- 4.3.1. The Customer may issue a separate engagement to KE-works to perform work in connection with Advice and/or Implementation.
- 4.3.2. The Customer must provide KE-works with all information and data necessary for the performance of the Contract in a timely manner and free of charge. The Customer vouches for and guarantees the accuracy of such aforementioned information and data. The Customer is furthermore responsible for, and accepts the risk of, potential problems and/or claims arising from the content, accuracy, completeness and consistency of all such data and information provided by the Customer. In addition, the Customer is obliged to inform KE-works immediately of any facts and circumstances that may be relevant to the performance of the Contract.
- 4.3.3. If and in so far as it can be inferred from the Contract that KE-works will arrange for the Implementation of the SaaS Service, it will prepare a plan of action for the Implementation in consultation with the Customer. By granting the engagement, the Customer agrees to the plan of action for the Implementation and this plan of action forms an integral part of the Contract. The Customer will grant its full cooperation during the Implementation.
- 4.3.4. The Customer acknowledges and understands that further to the Advice and/or Implementation the Customer may be required to purchase, for example, additional facilities, software, modules and interfaces to realise an adequate Implementation.
- 4.3.5. KE-works performs its work to the best of its knowledge and ability in cooperation with the customer and endeavours to achieve the best possible result for the Customer. Unless agreed otherwise in writing, the Customer always bear the risk and expense of the Customer's use of the advice provided by KE-works.

### 4.4. Custom Work

- 4.4.1. KE-works prefers not to offer Custom Work because KE-works addresses specifications/requirements with Standard Functionality as much as possible..



- 4.4.2. The Customer has the option to request KE-works to make Custom Work. KE-works has the discretion to determine the degree to which the Custom Functionality can be developed. KE-works may issue a Quotation to the Customer, but it is not obliged to do so because KE-works prefers not to build Custom Functionalities.
- 4.4.3. In addition, KE-works may charge an additional Service Fee and/or maintenance costs for Custom Functionality.
- 4.4.4. The Customer understands and accepts that any Custom Functionality built by KE-works will accrue to KE-works and become an integral part of the Standard Functionality, and will therefore be available to all Customers. In that case, the Customer will not be entitled to a refund of the amount paid for the Service Fee / maintenance costs for the Custom Functionality (if agreed).
- 4.4.5. If the functionality included in the Custom Functionality also becomes available in the Standard Functionality during the term of the Contract, KE-works may require the Customer to switch to using the Standard Functionality in question in order to prevent legacy versions.
- 4.4.6. KE-works cannot guarantee that Custom Work will always continue to work after updates, new versions or modifications. If KE-works anticipates that an update, new version or modification will impede the functioning of the Custom Work, then KE-works will submit a timely Quotation containing a proposal to make the Custom Work compatible with the planned update, new version or modification to the Customer.
- 4.5. Training Courses and Workshops**
- 4.5.1. All resources provided by KE-works may not be shared with and/or provided to third parties without KE-works' prior written consent.
- 4.5.2. Clause 1.6 (intellectual property rights) applies *mutatis mutandis* to Training Courses and Workshops.
- 4.5.3. In principle, Training Courses or sessions as part of a Workshop, and in particular the agreed dates, cannot be changed and/or cancelled early. However, KE-works may agree a different date and/or other arrangements in consultation with the Customer, but is not required to do so. Article 7:408(1) of the Dutch Civil Code does not apply to Training Courses and Workshops.
- 4.6. Escrow**
- 4.6.1. At the Customer's first request, KE-works will cooperate in an Escrow for continuity, so that the Customer can access the source code of the software underlying the SaaS Service in case of KE-works' bankruptcy or insolvency. In this respect, the Customer must enter into a separate Contract, for which the Customer will incur separate costs, including internal costs of employees.

## SECTION 5. SERVICE LEVEL AGREEMENT FOR SAAS SERVICE

### 5.1. Additional definitions

In addition to the other sections, the following capitalised terms in the General Terms and Conditions and/or Contract, whether in the singular or plural, will have the meaning as defined in this Clause.

- 5.1.1. *Best Effort*: KE-works will make ordinary efforts to achieve a certain goal or result without guaranteeing the achievement of that goal or result.
- 5.1.2. *Fix*: any modification or software workaround that corrects an issue or Defect in the SaaS Service.
- 5.1.3. *User Question*: a question about the use of the Functionality or a Feature Request.
- 5.1.4. *Feature Request*: a request for modification of the Functionality, whether or not further to a User Question.
- 5.1.5. *Scheduled Maintenance*: maintenance that is announced to the Customer, in which respect the announcement is made at least twenty-four (24) hours before the scheduled maintenance.
- 5.1.6. *Incident*: Defect regarding the SaaS Service, or a different issue regarding the availability of the SaaS Service.
- 5.1.7. *Emergency Maintenance*: maintenance that must be performed immediately to prevent partial or full unavailability of the SaaS Service, or to prevent or resolve security risks and/or leaks.
- 5.1.8. *Maintenance Window*: all time available outside of Working Hours.
- 5.1.9. *Response Time*: the time between reporting an Incident or making a User Question by the Customer and/or its Users and KE-works' response, non-Working Hours to not count for determining the response time.
- 5.1.10. *Service Level*: the service level applicable to the SLA services and belonging to the service level purchased by the Customer.
- 5.1.11. *Service Window*: the time available in a calendar month outside the Maintenance Window, minus the time for Scheduled Maintenance.
- 5.1.12. *SLA*: this service level agreement.

### 5.2. SLA services

Under this SLA, the following SLA services will be provided:

- 5.2.1. *Availability*: Availability entails that KE-works makes and keeps the SaaS Service available to Users.
- 5.2.2. *Support*: This service involves answering questions from Users of the Customer regarding the Customer's use of the SaaS Service. The provisions of Clause 2.5.7 apply to the number of times Support can be called upon.
- 5.2.3. *Maintenance*: Maintenance includes: (i) making new versions of the SaaS Service available, which new versions give the User access to new, improved or additional functionality (depending on Module agreed in the Contract); and (ii) providing Fixes.

### 5.3. Incident priorities

In case of an Incident, the following prioritisation applies:

- 5.3.1. *Service Level 1 - High*: A stagnation in the operation or execution of the Customer's business operations in which respect an issue in the Functionality is impeding use of the system or normal business operations.
- 5.3.2. *Service Level 2 - Normal*: A significant issue of functionality impeding a User from using a crucial Functionality of the system in a production environment or impeding a crucial part of the implementation activities.
- 5.3.3. *Service Level 3 - Low*: A Functionality is causing issues, but the issue is insignificant, does not have any direct consequences for the usability of the Functionality, or the User can resolve the issue through a workaround.

### 5.4. Service Levels

The following terms and conditions and Service Levels apply to the SLA services:

Services	KPI	Priority	Standard Service level	Premium Service level
<b>Availability Functionality</b>	<b>Availability</b>	N/A	99,9% during Service Window per calendar month.	99,9% during Service Window per calendar month.
<b>Support</b>	<b>Service desk availability</b>	N/A	99,9% during Service Window per calendar month.	99,9% during Service Window per calendar month.
	<b>Availability by telephone</b>	N/A	N/A	During Working Hours
	<b>Solution Incident</b>	All	Best Effort. Prioritisation determined by KE-works.	Best Effort and working with commitment to resolve the Incident.
	<b>Incident response time</b>	Service Level 1	Best Effort	Within four (4) Working Hours
		Service Level 2	Best Effort	Within eight (8) Working Hours
		Service Level 3	Best Effort	Within eight (8) Working Hours
<b>Response Time User Questions</b>	N/A	Best Effort	Within eight (8) Working Hours	
<b>Maintenance</b>	<b>Resolving a Defect</b>	N/A	Best Effort	Best Effort

## 5.5. Preconditions

- 5.5.1. Only the Customer's contacts agreed in the Contract or the User groups agreed in the Contract may ask User Questions and/or report Incidents.
- 5.5.2. If work is performed outside of Working Hours at the Customer's request, the Customer must keep one of its contacts available for questions posed by KE-works' employees.
- 5.5.3. The KE works employees have limited access to the Customer Environment in the SaaS service based on the need-to-know principle. Access will be granted only if access to the SaaS Service is actually required to perform the work in the context of the SLA and/or the Contract.
- 5.5.4. A contact of the Customer must review and test a resolved Incident within eight (8) hours, failing which the Incident will be deemed resolved by the Customer.
- 5.5.5. Work performed in the context of the SLA as a result of inexpert or excessive use by the Customer will not affect any calculation of the availability. This also holds true if data must be repaired based on a back-up as a consequence of errors attributable to the Customer's users.
- 5.5.6. An Incident must be reported to the service desk as follows: (i) the action resulting in the issue must be described clearly; (ii) the description must include screenshots; (iii) the time and the person who performed the action must be specified, stating the person's user name if possible.
- 5.5.7. A User Question must be submitted as follows: (i) the User Question must be clear and (ii) must state the reason why the question was submitted.
- 5.5.8. User Questions and Incidents must be reported through the service desk. If a Customer has a premium Service level, then Incidents with "Service Level 1: High" priority must also be reported by telephone.
- 5.5.9. Feature Requests are handled at KE-works' discretion and will only be handled if the following conditions are met: (i) if it is a useful generic addition to the SaaS Service; (ii) if many Customers could use the new feature; (iii) if the new feature significantly improves the ease of use of the

Functionality ; (iv) if the feature distinguishes KE-works from possible competitors; (v) and finally if the feature requires little to no time to realise. Clause 2.4 of the General Terms and Conditions applies *mutatis mutandis* to a larger Feature Request.

- 5.5.10. The mere fact that a Service Level is not met does not constitute default on the part of KE-works. The Customer must give KE-works notice of default, and afford KE-works a reasonable period to present an improvement plan, when KE-works structurally fails to meet Service Levels.
- 5.5.11. While remedying an Incident, KE-works will be permitted to implement a temporary or permanent software workaround with being required to obtain the Customer's permission.

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