



SCHEDULE A GENERAL TERMS

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1 APPLICABILITY

- 1.1 KATE Innovations and Customer hereby agree that:
- a. the below terms and conditions are the General Terms;
 - b. the General Terms apply to all Service Order, Change Orders, Schedules and any other agreement in which the KATE General Terms and Conditions are declared applicable;
 - c. the General Terms are part of the Master SaaS Agreement; and
 - d. no other general terms and conditions as defined by article 6:231 of the Dutch Civil Code of either Party apply to the Agreement.
- 1.2 In the Agreement, this Schedule A and all the other applicable Schedules the capitalized words shall have the meaning attributed to them in article 16 of this Schedule A.

2 SERVICES AND SERVICE LEVELS

- 2.1 KATE Innovations:
- a. shall provide the Services in accordance with Good Industry Practice and
 - b. undertakes that KIS substantially meets the applicable Documentation.
- 2.2 KATE Innovations shall use all reasonable commercial efforts to meet or exceed the Service Levels. Kate Innovations shall at the request of the Customer provide Customer with a report detailing its Actual Performance in respect of each of the Service Levels at the end of each Reporting Period.
- 2.3 KATE Innovations does not undertake to provide the Service uninterrupted or error free and that all errors will be resolved.
- 2.4 KATE Innovations is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3 IMPLEMENTATION

- 3.1 Customer understands and accepts that the Licensed Products are made available unconfigured and require further implementation efforts. KATE Innovations will assist Customer with the implementation, subject to conclusion of a Service Order for the provision of Professional Services and payment of the Charges set out therein.

4 TERMS OF USE

4.1 Authorised Use

- 4.1.1 Customer may access and use KIS in accordance with the terms of use set out in this Clause 4.
- 4.1.2 Customer's use of KIS is limited to the Licensed Products in the Cloud Environment and is subject to the following;
- a. Customer shall allow access and use of the Licensed Products by Authorised Users only;
 - b. Customer shall not exceed the Number of Licenses;
 - c. Customer may use the Licensed Products for processing of data relating to its own internal business purposes only; and
 - d. Customer is not entitled to a copy of the object code.
- 4.1.3 Customer may replace a Named User by another Authorised User, provided that the total amount of Named Users shall not exceed the total Number of Licenses.



4.1.4 In relation to Authorised Users:

- a. Customer shall ensure that the Authorised Users use the Service in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement; and
- b. Customer shall ensure that each Authorised User keeps a secure password for their use of the Service, that such password is changed frequently and that each Authorised User keeps their password confidential.

4.2 Use Restrictions

4.2.1 Customer shall not modify, adapt, alter, translate, or create derivative works from KIS or any part thereof ; (ii) merge KIS (or any part thereof) with any other software, products or services (other than KATE-Innovation provided interfaces); (iii) sublicense, resell, re-distribute, lease, rent, loan, disclose or otherwise transfer KIS (or any part thereof) or any other associated products and services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source or object code of the KIS (or any part thereof); (v) use KIS (or any part thereof) to provide any facility management, service bureau or similar services to third parties, permit third parties to remotely access and use KIS (or any part thereof) or use KIS (or any part thereof) to develop a product line that is similar to KIS.

4.3 Unauthorised Use

4.3.1 Customer shall not:

- a. access, store, distribute or transmit knowingly any viruses or any material as part of its access use of the Service that is: unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depict sexually explicit images or promote unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- b. use KIS to provide services to third parties;
- c. transfer, temporarily or permanently any of its rights under the Agreement, or
- d. attempt to obtain, or assist third parties in obtaining, access to the Service, and KATE Innovations reserves the right without liability to Customer or prejudice to KATE Innovations' other rights, to disable Customer's or an Authorised Users access to the Service if the provisions of this clause are breached, provided that KATE Innovations has first notified Customer of such breach in writing and has granted Customer a reasonable period of time to remedy such breach.

4.3.2 Customer shall prevent any unauthorised access to, or use of, the Service and notify KATE Innovations promptly of any such unauthorised access or use.

4.3.3 KATE Innovations may audit Customer's and Authorised User's use of KIS. Such audit is at KATE Innovations' expense, and shall be exercised with reasonable prior notice and in a manner so as to not substantially interfere with Customers normal conduct of business.

5 CUSTOMER'S OBLIGATIONS

5.1 Customer shall provide all cooperation necessary for KATE Innovations to provide the Services, including but not limited to:

- a. provision of all available information and documents reasonably required by KATE Innovations to fulfil its obligations under the Service Order;
- b. information on any activity that may impact the provision of the Services and which can be reasonably foreseen, e.g., upcoming other projects and workload, in a proactive and timely manner;
- c. authorizations, decisions, and investigation of problems without delay and in due time; and
- d. availability of knowledgeable business, technical, and managerial personnel throughout the duration of the Service Order;



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- e. without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement; and
- f. carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance. KATE Innovations may adjust any timetable or delivery date set out in the Agreement, as reasonably necessary.

5.2 If KATE Innovations provides Services at Customer premises, Customer shall:

- a. provide suitable office space, supplies, furniture and other necessary facilities with telephone access for KATE Innovations' staff working at Customer premises; and
- b. provide necessary physical and logical access to systems, specifically the systems to be supported as part of the Services and including a dedicated network communication link and any system passwords that may be required.

6 CHANGE PROCEDURE

- 6.1 If Customer decides to propose a Change, Customer shall notify KATE Innovations of its request for a Change in writing and describe the proposed Change, as well as the grounds for needing such Change.
- 6.2 KATE Innovations shall upon receipt of such notification, assess availability, feasibility and/or consequences for, inter alia, the affected Service Order and related Services and/or Deliverables that may ensue from the requested Change.
- 6.3 If after such assessment, KATE Innovations agrees to make a proposal for the requested Change, then KATE Innovations shall complete an appropriate Change Order Form setting out in writing an offer to amend the relevant Service Order or an appropriate Service Order Form if the Change regards the provision of a Product or Other Service
- 6.4 If signed by both Parties, said offer will constitute a Change Order Form to the relevant Service Order, which will from there on forward be an integral part of that Service Order. Until an unmodified proposal for a Change by KATE Innovations has been accepted by Customer in writing, KATE Innovations shall continue to perform the Service Order unchanged.

7 INTELLECTUAL PROPERTY AND INDEMNITY

- 7.1 KATE Innovations shall retain all IP Rights in KATE Innovations Materials, including any modifications made to them by or on behalf of a Party or Affiliate under the Agreement.
- 7.2 Customer hereby grants KATE Innovations a royalty-free, non-exclusive licence:
 - a. to use all required Customer Materials and Data for the purpose of providing the Services to Customer; and
 - b. to permit Sub-Contractors the same as referred to in the previous paragraph a., as is required for KATE Innovations to perform its obligations under the relevant Service Order.
- 7.3 Customer hereby grants the license set out in clause 7.2 for the duration of the Term except that KATE Innovations may use Data during and after the Term for:
 - a. the purpose of enhancing, improving and developing the Services, Software and the technologies which enable them; and
 - b. without prejudice to its obligations pursuant to clauses 9 and 10 of the General Terms, generating anonymised aggregated datasets for the purpose of analysing KATE Innovation's business, sector and revenues and making such insights available to third parties at its discretion.
- 7.4 KATE Innovations will, at its own costs, defend any action brought against Customer by a Third Party, based upon a claim, that the use by Customer of the Licensed Products infringes that Party's copyright or patent and will pay the amount of any settlement or the costs and damages awarded against Customer including awarded legal fees (if any) in such action in a final judgement, provide that the infringement is not caused by:
 - a. modifications to the Licensed Products made by Customer or a Third Party;



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- b. the use of the Licensed Products together with Third Party Software; or
- c. the use of the Licensed Products in any way other than agreed between the Parties

and provided that:

- d. KATE Innovations is notified by Customer without delay in writing of any notice of claim or threatened or actual action and appropriate details thereof; and
- e. at KATE Innovations' request and expense KATE Innovations is given full cooperation by Customer for the defence or settlement by KATE Innovations in its own or in Customer's name of the claim or action in the sole discretion of KATE Innovations; and
- f. Customer in connection with any such claim or action does not act without or against the instructions of KATE Innovations.

7.5 Following notice of a claim or a threatened or actual action, Customer agrees that KATE Innovations may procure for Customer the right to continue to use the affected Licensed Software or may replace or modify the Licensed Software so as to make it non-infringing of any Third-Party right and KATE Innovations shall take reasonable endeavours that such replacement or modification shall perform in a manner similar in all material respects to the Licensed Products as it was prior to such replacements or modification. KATE Innovations may terminate the Agreement and/or the affected Service Orders if non of the remedies in this clause are available on commercially reasonable grounds as determined by KATE Innovations. The foregoing is the sole and exclusive remedy of Customer and KATE Innovations' entire liability in relation to such claim.

8 CHARGES AND INVOICING

- 8.1 In consideration of the provision of Services by KATE Innovations under the Agreement, KATE Innovations shall invoice, and Customer shall pay the Charges.
- 8.2 The Charges owed by Customer for KIS are as set out in the Service Order and is a subscription-based license, which becomes periodically due and payable from the relevant SO Effective Date.
- 8.3 Where any use other than agreed of any part of KIS or the Software occurs, then without prejudice to KATE Innovations' other rights and remedies, Customer shall be liable to pay to KATE Innovations an amount equal to the fees which would have been payable under its then current terms had such use been properly licensed.
- 8.4 Unless otherwise agreed in the Service Order, the Charges accrue on a subsequent calculation basis.
- 8.5 Customer shall pay the Charges which have become payable within thirty (30) days of receipt of an invoice from KATE Innovations, or such different payment term as specified in the Service Order. All sums payable under any Service Order shall be paid in EURO.
- 8.6 All Charges are fixed during the Initial Term except that during and after expiry of the Initial Term KATE Innovations may increase the Charges:
 - a. Once per calendar year by a percentage not exceeding the then applicable Services Price Index ("SPI") (2015 = 100) as provided by the Central Planning Bureau ("CBP") of the relevant preceding calendar year; and
 - b. at any time to pass on an increase of third party cost incurred by KATE Innovations to provide the Services.
- 8.7 As from expiry of each Initial Term, KATE Innovations may charge revised Charges by giving written notice.

9 CONFIDENTIALITY

- 9.1 Each Party shall not use the other Party's Confidential Information other than in the exercise and performance of its rights and obligations under the Agreement and the relevant Service Order(s).
- 9.2 The restrictions imposed by clause 9.1 shall not apply to the disclosure of any Confidential Information which:



- a. is now in or hereafter comes into the public domain other than as a result of a breach of this clause 9;
- b. before any negotiations or discussions leading to the relevant Service Order was already known by the receiving Party (and was obtained or acquired in circumstances under which the receiving Party was not bound by any form of confidentiality obligation); or
- c. is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing Party to limit disclosure to such authorised person to the extent necessary).

9.3 Each Party shall notify the other Party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, at that other Party's reasonable expense, in connection with any enforcement proceedings which that other Party may elect to bring against any person.

10 DATA SECURITY AND DATA PROCESSING

10.1 Where KATE Innovations processes Personal Data pursuant to a Service Order it shall act as Data Processor of Customer with respect to that Service Order.

10.2 The Parties shall duly observe all its respective obligations under the applicable Data Protection Laws. Customer warrants that it has lawfully obtained the data it provides to KATE Innovations in order for KATE Innovations to provide the Services and that it will indemnify and hold KATE Innovations harmless from and against all claims for damages and/or penalties brought against Service provider in relation to its use of the Services and/or Personal Data or its violation of Data Protection Laws.

10.3 KATE Innovations shall:

- a. process Personal Data – where applicable – as described in the Agreement;
- b. not process any Personal Data other than in accordance with Customer's instructions which are to process Personal Data only to the extent necessary to carry out the Services and for the purposes as set out in the Agreement;
- c. ensure that the only persons able to process or access any particular Personal Data in KATE Innovations' or Sub-Processor's possession, custody, or control in the performance of the Service Order are the KATE Innovations' or Sub-Processor's employees who need to process or access such Personal Data in order to carry out their duties in connection with that Service Order;
- d. provide reasonable assistance to ensure that Customer is able to fulfil its legal obligations when a Data Subject exercises his or her rights under the Data Protection Laws;
- e. as from the date termination of a Service Order has taken effect, return all Personal Data and the copies thereof, by means of Customer's choice, to Customer or a Third Party designated by Customer; and
- f. not process or transfer any Personal Data outside the European Economic Area, without the prior written consent of Customer. The consent of Customer under this clause 10.3 could be subject to reasonable conditions.

10.4 KATE Innovations may engage one or more Sub-Processors provided it enters into sub processing agreements with the relevant Sub-Processors which requires the Sub-Processor to abide by similar obligations as KATE Innovations under this clause 10. KATE Innovations may replace a Sub Processor at any time and KATE Innovations will notify Customer of such replacement. If Customer does not object to such replacement within thirty (30) days and on reasonable grounds, consent to such replacement is considered granted.

10.5 KATE Innovations shall, and shall procure that its Sub-Contractors, at all times co-operate with any reasonable audit performed under this clause 10 at Customer's sole expense.

10.6 KATE Innovations shall:

- a. take and maintain appropriate TOMs against accidental destruction, loss, alteration, disclosure or access from or to Data or any form of unlawful processing;



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- b. take into account the TOMs described, determine additional or amended TOM's in the Service Order if required by local laws applicable to processing activities by Customer;
- c. take adequate safety measures and maintain procedures to avoid unauthorized access to the data processing equipment; and
- d. ascertain that the TOMs as described:
 - i. conform to the state of technology, and are adequate taking into consideration the nature of the Data, the processing of Data and any specific risks of the processing;
 - ii. will be defined and applied in such manner that, with regards to the processing of Personal Data by KATE Innovations upon instruction of Customer pursuant to the relevant Service Order, Customer will act in accordance with the applicable Data Protection Laws.

10.7 KATE Innovations agrees that:

- a. KATE Innovations will reasonably assist Customer in meeting its obligations set out in article 35 GDPR, provided that any costs to KATE Innovations for providing such reasonable assistance to Customer will be borne by Customer;
- b. it shall keep Data strictly confidential and secure, in accordance with the relevant Service Order, and ensures, prior to the disclosure of Personal Data to its employees, Sub-Contractor or employees of Sub-Contractor, that these persons are bound by the same conditions of confidentiality;
- c. the only persons able to process or access any particular Data in KATE Innovations' or Sub-Contractor's possession, custody or control in the performance of the relevant Service Orders are KATE Innovations' or Sub-Contractor's employees who need to process or access such Data in order to carry out their duties in connection with that Service Order; and
- d. the taken measures and procedures are adequate as to ensure compliance with the laws and regulations in the area of data processing.

10.8 KATE Innovations shall notify Customer without undue delay after becoming aware of the occurrence of a Security Breach.

10.9 The notification referred to in clause 10.8 shall at least:

- a. specify the time, date and location of the Security Breach and a detailed account of the Security Breach, including a characterization of affected and potentially affected Data;
- b. include an assessment of the likely consequences of the Security Breach; and
- c. include measures taken or to be taken to mitigate the consequences of the Security Breach.

10.10 If a Security Breach occurs, KATE Innovations shall further:

- a. provide all other information and assistance reasonably required by Customer in order to comply with Customer's obligations related to a Security Breach under Data Protection Law;
- b. keep Customer apprised of any additional information that is related to the Security Breach that it becomes aware of after sending the notification referred to in clause 10.8;
- c. unless KATE Innovations is compelled by Data Protection Law, (i) not inform any third party of such Security Breach without Customer's prior written consent and (ii) obtain Customer's approval regarding the content of such disclosure to minimize the adverse impact to Customer; and
- d. ascertain whether a Security Breach may be repeated or is ongoing and KATE Innovations will undertake immediate action to prevent a repeat occurrence of the breach.

10.11 Subject to this clause 10, KATE Innovations may only disclose Data:

- a. when instructed by Customer to disclose certain Data; or
- b. if and to the extent required by law or for the purposes of legal proceedings, provided KATE Innovations only discloses Data on a need-to-know basis as reasonably determined by KATE Innovations; or



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- c. if and to the extent required by any securities exchange or regulatory or governmental body to which that Party is subject, provided KATE Innovations only discloses Data on a need-to-know basis as reasonably determined by KATE Innovations.
- 10.12 KATE Innovations shall allow Customer and any auditors of Customer or the relevant supervising authority an audit to assess compliance with KATE Innovations' obligations set out in this clause 10. In no event is KATE Innovations required to grant aforementioned auditors access to Data or Confidential Information of parties other than Customer.

11 LIABILITY

- 11.1 Where KATE Innovations is liable then irrespective of the grounds for liability, including indemnities and/or breached warranty obligations, it shall have no obligation to compensate for Indirect and Consequential Damages and any obligation to compensate shall be subject to the limitations as are set forth in clauses 11.2 and 11.3.
- 11.2 KATE Innovations' entire and aggregate liability per calendar year for damages, irrespective of the grounds for liability including indemnities and breached warranties, for any and all events will be limited to:
- a. if arising in relation to the MSA fifty percent (50%) of the Charges paid under the Agreement by reference to the same calendar year.
 - b. if arising in relation to a Service Order: fifty percent (50%) of the Charges paid under the Service Order that gave rise to the liability reference to the same calendar year; or
 - c. if arising in relation to an other Agreement than the MSA or a Service Order Euro: 20.000,- for the aggregate.
- 11.3 Clause 11.2 is not applicable to liability arising in connection with (i) wilful default or (ii) gross negligence.
- 11.4 Other than the indemnification set out in clause 7.4 by KATE Innovations, Customer shall indemnify and hold harmless KATE Innovations against any action based on the claim that Customer acts unlawfully by using the KATE Innovations Software. Customer has full responsibility for the way it uses the Licensed Products.

12 DURATION AND TERMINATION

12.1 General

- 12.1.1 The MSA shall enter into force on the MSA Effective Date for the duration of its Initial Term and terminates in accordance with either one of the grounds set out in in this clause 12.
- 12.1.2 A Service Order shall enter into force on its SO Effective Date for the duration of its Initial Term and terminates in accordance with either one of the grounds set out in in this clause 12 and the relevant Service Order.

12.2 Termination General

- 12.2.1 Unless explicitly stated otherwise in a Service Order, any termination of the Agreement as set out in this clause 12 shall not affect the Service Orders which are in effect at the time and vice versa. After termination of the Agreement, the provisions of the Agreement shall continue to apply to these Service Orders.
- 12.2.2 Termination by Customer under this clause 12 shall not entitle Customer to any remuneration or compensation for the Services provided prior to such termination.

12.3 Renewal and Termination

- 12.3.1 At expiry of its Initial Term the Agreement is automatically renewed by successive one (1) year periods ("Renewal Term") unless either Party terminates the Agreement taking effect at expiry of its Initial Term, or as the case may be expiry of the then current Renewal Term, by giving the other Party at least three (3) months prior written notice.
- 12.3.2 At expiry of its applicable Initial Term the Service Order is automatically renewed by successive one year periods ("Renewal Term") unless either Party terminates the Service Order taking effect at expiry



of the Initial Term, or as the case may be expiry of the then current Renewal Term, by giving the other Party at least three months prior written notice.

12.4 Termination for cause (*ontbinding*)

12.4.1 Parties may terminate an Agreement for cause (*ontbinden*) as permitted under Dutch Civil Law. If termination for cause relates to the MSA or a Service Order such termination shall not affect any other Service Order.

12.5 Insolvency

12.5.1 KATE Innovations may terminate the Agreement including any Service Order for convenience, at any time and immediately if any of the following events occur in relation to Customer:

- a. Customer is unable or admits inability to pay its debts as they fall due, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- b. bankruptcy, suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation;
- c. material assets of the Customer are attached and such attachment is not lifted within 30 calendar days; and/or
- d. the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or another similar officer.

12.6 Other

12.6.1 Irrespective of the grounds for termination, termination shall neither affect any of Customer's payment obligations accrued until termination takes effect, nor shall termination affect payments made by Customer prior to such termination.

12.6.2 Termination of a Service Order (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

12.6.3 Termination shall not affect clauses which by their nature are intended to continue to apply after termination, amongst these clauses are : 9 (Confidentiality), 10 (Data Security and Data Protection), 11 (Liability) and 15 (Governing Law and Jurisdiction).

13 EXIT ASSISTANCE

13.1 If requested by Customer and against payment of agreed Charges for Other Services, KATE Innovations shall provide such reasonable assistance to transfer Client Data and provide such other reasonable assistance to facilitate the orderly transfer of KATE Innovations' obligations hereunder to Customer or a successor supplier as set out in an exit plan agreed to for this purpose (the "Exit Plan") and a Service Order.

13.2 KATE Innovations acknowledges that the uninterrupted transfer of the services to be provided hereunder is critical to Customer and its business. Therefore, KATE Innovations shall continue to provide such services in accordance with the requirements of the Agreement, provided that Customer (i) has not breached the Agreement and (ii) shall continue to pay all fees due for such services in advance, until the Exit Plan has been fully executed.

13.3 Up to sixty (60) calendar days after termination takes effect KATE Innovations shall keep Client Data in encrypted format available to Customer. KATE Innovations shall permanently delete and destroy all Client Data including all existing back-ups after expiry of the 60-calendar day term. KATE Innovations shall confirm such deletion to Customer in writing.

13.4 Upon execution of the process described in clause 13.1 to 13.3:

- a. all usage rights granted shall immediately terminate and KATE Innovations shall no longer provide the Service;
- b. Customer shall immediately pay to KATE Innovations any outstanding Charges; and



- c. each party shall return and make no further use of any equipment, property, Materials and other items (and all copies of them) belonging to the other party.

14 MISCELLANEOUS

14.1 Cloud Provider Terms

- 14.1.1 Customer acknowledges that KIS is hosted by the Cloud Providers and KATE Innovations is subject to the Cloud Providers Terms which Cloud Provider generally applies and has no ability to change. KATE Innovations shall inform Customer of the Cloud Provider Terms upon request.
- 14.1.2 Customer shall not use KIS in a manner that causes a breach of such Cloud Provider Terms by KATE Innovations and Customer shall indemnify and hold KATE Innovations from any claims brought by a Third Party in connection with Customer's breach of its obligation set out in this clause 14.1.2.
- 14.1.3 KATE Innovations may suspend the provision of KIS without liability to KATE Innovations in order to comply with the Cloud Provider Terms or to prevent damage to KATE Innovations caused by Customer's usage of KIS.
- 14.1.4 Customer agrees to provide to KATE Innovations such information or Materials relating to Customer as reasonably requested by KATE Innovations or the Cloud Provider to verify Customer's compliance with the Cloud Provider.
- 14.1.5 In addition to any other rights, KATE Innovations shall have the right to suspend Customer's access to KIS immediately if:
 - a. Customer's use of KIS poses an immediate security risk to the Cloud Provider, KATE Innovations or any other Third Party; or
 - b. Customer is causing a breach of the Cloud Provider Terms by KATE Innovations.

provided that in such cases, KATE Innovations will provide to Customer as much prior notice as is appropriate under the circumstances and KATE Innovations will forthwith escalate any (contemplated) suspension to senior management of Customer.

- 14.1.6 If KATE Innovations duly suspends Customer's right to access or use all or any part of the Service Customer shall remain responsible for all Charges incurred through the period of suspension.

14.2 Other

- 14.2.1 The rights and obligations of Customer hereunder cannot be assigned without the prior written consent of KATE Innovations. This clause expressly intends to have effect on contract law and property law (*goederenrechtelijke werking*).
- 14.2.2 Any amendment or waiver of any provision and any waiver of any default under the Agreement, shall only be effective if made in writing and signed by Parties subject to the provisions as set out in the Agreement or relevant Service Order.
- 14.2.3 No failure or delay by a Party in exercising any right or remedy provided by law or under the Agreement, or any Service Order shall impair the right or remedy, or operate as a waiver or variation of it, or preclude its exercise at any subsequent time. No single or partial exercise of any right or remedy shall preclude any further exercise of the right or remedy or the exercise of any other right or remedy.

14.3 Interpretation

- 14.3.1 If there is a conflict or inconsistency between any constituent part of the Agreement the following order of precedence will be applied and the (part of) the document higher in the following order of precedence will be applied and the document higher in the order of precedence will prevail with respect to such conflict or inconsistency and represent the overriding obligation on the Parties, unless the document lower in the order of precedence expressly states otherwise with respect to that specified conflict or inconsistency:
 - a. the clauses of the MSA
 - b. the General Terms;
 - c. Schedule B;



- d. the Annexes to Schedule B to the Agreement;
- e. the Service Orders; and
- f. the Annexes to the Service Orders.

14.4 Unless expressly stated otherwise in this Schedule A:

- a. "written" shall also include electronic communication by email and internet;
- b. unless the context otherwise requires, words in the singular include the plural and vice versa.

14.4.2 No provision of the Agreement, creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose, unless expressly stated otherwise. A Party has no authority to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

14.4.3 If any provision of the Agreement, or any, or portion thereof, is held to be void, invalid, illegal or unenforceable, this shall not affect the legality, validity or enforceability of the remaining provisions. The invalid provisions shall, if required, be modified or amended to the fullest extent possible under applicable law so as to reflect the original meaning and intent of the Parties.

14.4.4 The mere lapse of a date or agreed time frame for performance of the Service shall not automatically constitute a default (verzuim) under the Agreement.

14.4.5 The Agreement, contains the entire understanding of the Parties with respect to the subject matter hereof and substitutes and merges any previous agreement, be it written or oral, among the Parties concerning the subject matter hereof.

14.4.6 Links to Third-Party sites: KATE Innovations is not responsible for the operation of any Third-Party sites or services, the contents of any Third-Party sites or services, any links contained in Third-Party sites or services, or any changes or updates to Third-Party sites or services. KATE Innovations is providing these links and access to Third-Party sites and services to Customer only as a convenience, and the inclusion of any link or access does not imply an endorsement by KATE Innovations of the Third-Party site or service.

15 GOVERNING LAW AND JURISDICTION

15.1 The Agreement, shall be governed by and construed in accordance with the laws of the Netherlands.

15.2 All disputes, controversies or claims between the Parties arising in connection with the Agreement, or further contracts resulting there from, shall be submitted to ICT-mediation in accordance with the ICT-Mediation Regulations as of the Foundation for the Settlement of Automation Disputes (SGOA), having its registered office in The Hague. The Parties agree to attend the first mediation meeting cooperatively. Thereafter the Parties are free to terminate the ICT-mediation at any time for any reason.

15.3 As long as ICT-mediation is not terminated, neither party shall submit the dispute to a court, except solely for the purpose of preserving rights or making necessary interim arrangements.

15.4 In the event that a dispute is not settled by means of ICT-mediation or if ICT-mediation has ended by either Party, then the competent court of the Netherlands Commercial Court in Amsterdam shall have exclusive jurisdiction over all disputes, controversies or claims between the Parties arising in connection with the Agreement, or further contracts resulting therefrom.

16 DEFINITIONS

16.1 In the Agreement the capitalized words shall have the meaning attributed to them as follows:

Actual Performance	means to what extent the Target pertaining to KPI are actually achieved over a certain period of time (e.g. Reporting Period or Measurement Period);
Affiliate(s)	means any entity Controlling, Controlled by, or under common Control with a Party and designated as such in the relevant Service Order;
Agreement	means the MSA any (other) Service Order, Change Orders, Schedules, and any other agreement the Parties may conclude after the MSA Effective Date;



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Annex	means the annex to the Service Order;
Authorised Affiliates	means those entities that are Affiliates of Customer at the Service Order Effective Date until any such entity ceases to be an Affiliate;
Authorised Use	means use of KIS in accordance with the MSA and the applicable Service Order;
Authorised Users	means those employees of Customer, of Authorised Affiliates and Customer's professional service providers who are permitted by Customer to use the Licensed Products;
Change	means modification of the (scope of the) Services, Service Levels and/or Deliverables of a Service Order;
Change Order Form	means the document designated as Change Order Form by KATE Innovations;
Charges	means the charges for the Services set out in the Service Order;
Cloud Environment	means the servers and infrastructure procured as a service from the Cloud Provider on which the Licensed Products are hosted by KATE Innovations;
Cloud Provider	such third-party providers as are engaged by KATE Innovations to provide the Cloud Environment from time to time;
Cloud Provider Terms	such terms that KATE Innovations notifies to Customer from time to time as being the Cloud Provider's requirements in relation to use and provision of the Cloud Environment;
Confidential Information	means the Software and any information, in whatever form or medium, which has been kept confidential by the Party (or any of Party's Sub-Contractors) from whom the information originates and which has not come into the public domain during the Term and for the duration of any Service Order in breach of any obligation of confidence, including without limitation information relating to the commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing of a Party;
Contract Year	means each consecutive period of 12 months counting from the MSA Effective Date;
Control	means with regard to an entity the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights, or the equivalent right under contract to control management decisions with regard to relevant subjects;
Customer Materials	means Materials of the Customer or licensed to it by third parties;
Data	means all data and information including Personal Data provided by Customer and/or its Affiliates, or all Data obtained, developed, produced or processed by KATE Innovations or subcontractor or Data deriving from the Services;
Data Controller	means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data;
Data Processor	means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the Data Controller;
Data Protection Laws	means all data protection laws applicable to the processing (including transfer) and use of Personal Data in the context of activities carried out pursuant to the MSA and any Service Order, including but not limited to the GDPR (and any amendments thereto) and any local legislation implementing the applicable data protection laws in the country where Parties or Sub-Contractors are established;
Data Subject	means a natural person whose Personal Data is processed;
Deliverables	mean the agreed work products specifically developed by KATE Innovations for Customer under a Service Order and which are defined as such in the relevant Service Order;
Documentation	means the manuals, and other underlying material, including the Agreement, in paper form, electronic form or other, which describe the



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	functions and operation of the Licensed Products as made available by KATE Innovations;
Features	means a functionality which is an optional part of the Product and which KATE Innovations generally offers to the market as a chargeable option to a certain Products as determined by KATE Innovations from time to time;
GDPR	means the General Data Protection Regulation (EU) 2016/679;
General Terms	means the present terms and conditions of KATE Innovations;
Good Industry Practice	means in relation to the performance by KATE Innovations of Services, and any part thereof, KATE Innovations' commercial reasonable effort to provide the Services with such skill, diligence and prudence which would reasonably be expected from another service provider in the same field as KATE Innovations;
Indirect and Consequential Damages	means loss of actual or anticipated profit, loss of revenue, loss of anticipated savings, loss of data, loss of goodwill and/or loss of business and any other indirect or consequential damages;
Initial Payment	means the Charges that become due at MSA Effective Date as specified in Schedule B;
Initial Service Order	means the Service Order attached as Schedule B to the MSA;
Initial Term	means (i) in relation to the MSA 3 Contract Years and (ii) in relation to a Service Order the period of time specified therein and in absence thereof three hundred and sixty five days (365) calendar days counting from the SO Effective Date;
IP Rights	means patents, trademarks, service marks, logos, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
KATE Innovations Materials	means the Software and any Materials developed, owned by or licensed to KATE Innovations, its Affiliates and/ or its sub-contractors;
Kate Innovations SaaS or "KIS"	Software as a Service (SaaS) which consists of the ability of Customer to access and use the Licensed Products in the Cloud Environment;
KATE Master SaaS Agreement or MSA	means the Master SaaS agreement, including the Schedules thereto;
KPI or Key Performance Indicator	means each criterion, identified as such in the Documentation, that measures KATE Innovations' performance with respect to a specific part of KIS;
Licensed Products	means those Products identified as such in a Service Order which Customer is authorised to use as part of KIS;
Materials	means software, documents, manuals, equipment, servers, infrastructure, databases, programming tools, methodology, reports, designs, drawings, trade secrets and trademarks, machine readable text and files (both hard copy and electronic) and all other documentation, materials and information;
Measurement Period	means the time period per KPI, during which the Actual Performance of the relevant KPI is measured and calculated as set out in the Documentation;
MSA Effective Date	means the date of signing of the MSA by both Parties;
Named User	is an Authorised User registered by name;
Number of Licenses	means the number of Named Users set out in Schedule B in the relevant Service Order;
Other Service	mean all services other than KIS provided by KATE Innovations to Customer;
Personal Data	means personal data as defined in article 4 GDPR;
Products	means a bundle of the Software identified as a such by KATE Innovations and which it generally offers to the market as KIS from time to time;



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Professional Services	means Other Services which KATE Innovations provides in support of Customer with the implementation of a Licensed as are specified in the relevant Service Order for the provision of such services;
Renewal Term	has the meaning set out in clause 12.3;
Reporting Period	means the time period as described in the Documentation, which is covered by the report concerning the Actual Performance;
Review Period	means the time period as described in the Documentation, which is covered by the assessment of the Actual Performance in relation to the relevant KPI;
Schedules	mean the documents as attached to the MSA, constituting an integral part of the MSA;
Security Breach	means any breach of security leading to or that may have led to accidental or unlawful destruction, loss, alteration, compromise, disclosure of, or access to Data, stored, transmitted or otherwise processed in the context of providing or using the Services;
Service(s)	means KIS, and any Other Services that KATE Innovations agrees to provide to Customer;
Service Order or "SO"	means an agreement between the Parties in the form of a Service Order Form signed by both Parties which specifies the Licensed Products as set out in Schedule B and/or the such Other Service as agreed therein ;
SO Effective Date	means the date of signing of the Service Order by both Parties and with respect to the Initial Service Order the MSA Effective Date;
Service Order Form	means the document designated as Service Order Form by KATE Innovations;
Service Order Template	means the template for a Service Order as designated by KATE Innovations;
Service Levels	means the Targets for the provision of KIS as specified in the Documentation;
Software	means software in object code developed by KATE Innovations and/or its Affiliates;
Sub-Contractor(s)	means any person or entity to whom KATE Innovations sub-contracts the performance of any of its obligations under the MSA or Service Order;
Sub-Processor	means any Data Processor engaged by the Data Processor;
Target	means the performance per KPI which KATE Innovations strives for, as defined in the Documentation;
Term	means the term starting at the MSA Effective Date and ending on the later of termination of the MSA or termination of the last Service Order;
Third Party Materials	means Materials developed and/or owned by a third party;
Third Party Software:	means software which is owned by a third party and which is used by Customer in conjunction with the Licensed Products; and
TOMs	means technical and organizational measures.