

# Master Services Agreement

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# 1 Parties

## 1.1 keylight

keylight GmbH, a company incorporated in Berlin Germany (DE 815556911, registered at Amtsgericht Charlottenburg, HRB 164642B) having its principal place of business at Fasanenstr. 77, 10623 Berlin, Germany ("**keylight**"); and

## 1.2 Customer

**[Name of Customer]**, a company incorporated in **[COUNTRY]**, having its principal place of business at **[ADDRESS]** ("**Customer**").

# 2 Contract structure and order-of-precedence

This keylight Master Services Agreement ("**Agreement**") is entered into between keylight and Customer, effective as of **[DATE]** ("**Effective Date**"). Capitalized terms in this Agreement are defined in the [Definitions](#) and elsewhere in this Agreement. This Agreement and all Order Forms govern Customer's access to and use of keylight's Service, and any SOW shall govern any Professional Services keylight provides to Customer. Customer and keylight may be referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**." In the event of any conflicts between this Agreement, any Order Form, and/or any SOW, the following order-of-precedence applies: SOW take precedence and prevail over Order Forms solely with respect to the subject matter of SOW; and Order Forms and SOW take precedence and prevail over this Agreement solely with respect to their respective subject matter.

THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN KEYLIGHT AND CUSTOMER. CUSTOMER IS RESPONSIBLE FOR CAREFULLY READING ALL TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE SIGNING AN ORDER FORM, OR ACCESSING OR USING ANY KEYLIGHT SERVICE. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS CUSTOMER MAY REFERENCE OR PROVIDE, KEYLIGHT'S OFFER OR ACCEPTANCE TO ENTER INTO AN AGREEMENT WITH CUSTOMER WITH RESPECT TO ANY KEYLIGHT SERVICE IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT AND CONDITIONED ON CUSTOMER'S CONSENT TO THIS AGREEMENT. TERMS AND CONDITIONS OF CUSTOMERS SHALL NOT APPLY AND ARE HEREWITH WAIVED. KEYLIGHT OBJECTS TO THE APPLICABILITY OF SUCH CUSTOMER TERMS AND CONDITIONS.

# 3 Ownership of service and customer data

## 3.1 Ownership of the Service

The Service is owned by keylight, and is protected by copyright, trade secret and other intellectual property laws. keylight and its licensors retain any and all rights, title and interest in and to the Service (including, without limitation, all Intellectual Property Rights), including all copies, modifications, extensions and derivative works thereof. Customer's right to use the Service is limited to the rights expressly granted in this Agreement and the applicable Order Form(s). All rights not expressly granted to Customer are reserved and retained by keylight and its licensors.

### **3.2 Ownership of Customer Data**

As between Customer and keylight, (a) all Customer Data is solely owned by Customer, and (b) Customer retains any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works thereof.

### **3.3 Customer Data**

Customer grants to keylight a world-wide, limited license and the permission, for the Term, to host, copy, transmit, display Customer Data only to the extent necessary for keylight to provide the services and support in accordance with this agreement. Subject to the limited licenses granted herein, keylight acquires no right, title or interest from the Customer under this Agreement in or to any Customer Data.

## **4 Grant of rights**

Subject to the terms and conditions of this Agreement, keylight hereby grants to Customer the non-exclusive, non-transferable (except as specified in [18.2 Assignment & Other Transfers](#)), worldwide, royalty-free right to access and use the Service during the Service Term in accordance with the terms of this Agreement and all applicable Order Form(s) and SOW (e.g., any usage volume terms, usage and functional limitations and limitations to particular Customer legal entities, business units, projects, brands, products and/or services set forth therein).

## **5 Customer responsibilities**

### **5.1 Customer Responsible for User Accounts**

Customer is responsible for all activity occurring under Customer's User accounts (except to the extent any such activity is caused by keylight), and for complying with all laws and regulations applicable to Customer's use of the Service. Customer also must (a) notify keylight promptly upon becoming aware of any unauthorized use of any Customer's password or account (or any other breach of security of the Service), and (b) notify keylight promptly upon becoming aware of, and make a reasonable effort to stop, any unauthorized copying, distribution or other misuse of any aspect of the Service.

### **5.2 Use Restrictions**

Customer must not, without keylight's prior written consent, cause or permit the: (a) use, copying, modification, rental, lease, sublease, sublicense, transfer or other commercial exploitation of, or other third party access to, any element of the Service, except to the extent expressly permitted by this Agreement (Customer may allow its own subsidiaries and customers to access the functionality or output of the Service via interfaces, portal applications and the like, solely for Customer's internal business purposes in accordance with the applicable Order Form; (b) creation of any modifications or derivative works of the Service; (c) reverse engineering of the Service; (d) gaining of unauthorized access to the Service or its related systems or networks (for example, by impersonation of another user of the Service or provision of false identity information); (e) interference with or disruption of the integrity or performance of the Service or the data contained therein (for example, via unauthorized benchmark testing or penetration testing); (f) sending, storing or use of any Customer Data in connection with the Service for which Customer lacks sufficient ownership or other rights; or (g) sending, storing or use of any infringing, obscene, threatening, libelous or otherwise unlawful or tortious material in connection with the Service (including, without limitation, any illegal spam, or any material that is harmful to children or violates any third party privacy rights). Customer also must use appropriate and adequate security measures to access the Service, and must not knowingly send, store or use any material containing any viruses, worms, Trojan horses or other malicious or harmful computer code, files, scripts, agents or programs in connection with the Service. keylight also reserves the

right to take all steps reasonably necessary to protect the security, integrity or availability of the Service (e.g., by temporarily suspending access by anyone who introduces malicious code or attempts to do so), notwithstanding anything to the contrary in this Agreement.

### **5.3 Customer PCI Responsibilities**

If Customer or its third party service provider processes any credit card information using the Service, Customer (and/or such service provider, as applicable) will: (a) comply with their responsibilities under the Payment Card Industry Data Security Standard ("PCI DSS"); (b) implement and maintain reasonable security measures to protect all cardholder data in their possession or control; and (c) not take any action in connection with using the Service that places keylight in non-compliance with the PCI DSS (for example, storing any cardholder data in any custom fields of the Service).

## **6 Privacy security, Customer data, continuity and support**

### **6.1 Compliance with Privacy Laws**

Subject to the Data Processing Agreement ("DPA") between the Parties, keylight and Customer will at all times comply with all applicable Privacy Laws. keylight will only use Customer Data in the manner permitted by this Agreement and all applicable Privacy Laws; provided, however, that:

- a. Customer hereby authorizes keylight and its Affiliates to use Customer Data solely to provide the Service to Customer and otherwise meet keylight's obligations under this Agreement, including engaging sub processors and contractors to provide the Service to Customer in accordance with this Agreement (keylight remains liable for such Affiliates', sub processors' and contractors' compliance with this Agreement);
- b. Customer hereby warrants that, to the extent required by applicable Privacy Laws applicable to keylight's provision of the Service to Customer and the parties' respective obligations under this Agreement, Customer has provided all proper notices under applicable Privacy Laws and obtained from its personnel, customers and all legally-required third parties all rights and permissions legally required in order to grant the authorizations above and to use the Service in the manner contemplated by this Agreement.

In the event of any conflicts of the provision of this Section 6.1 and the DPA, the DPA shall take precedence over this Section 6.1.

### **6.2 Data Center**

Unless otherwise mutually agreed to in writing by the Parties, Customer's Tenant(s) will be hosted in keylight's European Union Data Center. Customer's Tenant(s) may be accessed remotely for support and technical operations purposes from outside of the EU.

### **6.3 Security of the Service and Compliance**

Throughout the term of this Agreement, keylight will maintain a data security program for the Service that will: (a) include reasonable administrative, physical, technical, organizational and other security measures to protect against unauthorized access to, or destruction, loss, unavailability or alteration of, any Customer Data processed or stored by the Service; (b) comply with the PCI DSS (or prevailing successor industry standard, if replaced); and (c) include reasonable and appropriate controls pursuant to keylight's ISO 27001 audit (or other name if replaced); and (d) notify Customer within forty-eight (48) hours via email and/or telephone conversation upon becoming aware of any security breach of the Service. Subject to the DPA, keylight will be responsible for unauthorized access and damage to, and for unauthorized deletion, destruction and loss of, Customer Data solely to the extent arising from keylight's negligent breach of its obligations under this Agreement pursuant to [14 Warranties and Commitments](#) and [16 Limitation of liability](#) below.

## 6.4 Data Retention

Regardless of the basis for expiration or termination of this Agreement and subject to the DPA, keylight will not be obligated to retain any Customer Data for longer than thirty (30) days after any such expiration or termination, unless otherwise agreed in advance by the Parties in writing.

## 6.5 Requests by Customer

In a manner that conforms to any time-related requirements set out in applicable Privacy Laws, and in any event as soon as reasonably practicable if sooner, keylight must comply (and must procure that all its subcontractors comply) with any reasonable requests by the Customer to:

- a. correct or delete inaccurate Customer Data;
- b. provide a copy of Customer Data that is stored in any form of retrieval or storage in the possession or control of keylight or that of its subcontractor;
- c. provide any requested assistance to allow the Customer to comply with Privacy Laws.

## 6.6 Business Continuity & Disaster Recovery

keylight will implement and maintain throughout the term of this Agreement reasonable business continuity and disaster recovery plans to assure availability of the Customer Data following any significant interruption or failure of critical business processes or systems affecting the Service.

## 6.7 Support & Service Level Agreement

keylight will provide technical support for the Service in accordance with [Exhibit A](#) to this Agreement (Support and Service Level Agreement) as long as Customer is entitled to receive support under the applicable Order Form and this Agreement.

## 6.8 Obligations

keylight must in respect of Customer Data, comply with the following obligations: (a) take reasonable steps to ensure the reliability of keylight's personnel who have access to Customer's personal information and is responsible for the acts and omissions of its personnel who have access to Customer's personal information, as if those acts or omissions were its own; and (b) immediately notify Customer of any privacy breaches, or suspected privacy breaches in connection with the keylight's access, processing and use of personal information and providing all necessary assistance (including complying with reasonable directions) to confirm and remedy the breach.

# 7 Terms of agreements

## 7.1 Term of Agreement

This Agreement will begin on the Effective Date and continue in effect until all Order Forms and SOW expire or are terminated in accordance with this Agreement (e.g., [8 Termination](#)).

## 7.2 Term of Order Forms

The term of each Order Form will be set forth therein, starting on the effective date specified therein and continuing for the initial Service Term specified in each Order Form, unless earlier terminated pursuant to the terms of the respective Order Forms or this Agreement ("**Initial Service Term**").

PLEASE CAREFULLY REVIEW THESE AUTOMATIC RENEWAL TERMS AND THOSE IN [9.2 Modification of Fees Upon Renewal](#). Unless otherwise set forth in the applicable Order Form, or unless the Order Form is terminated in accordance with [8.2 Termination of Order Form or SOW](#), upon expiration of the Initial Service

Term, the relevant Order Form will renew automatically on an annual basis for subsequent renewal terms of twelve (12) months (each a “**Renewal Service Term**”), unless either Party notifies the other Party in writing, at least thirty (30) days (subject to [9.2 Modification of Fees Upon Renewal](#)) prior to the end of the then-current Service Term, that it chooses not to renew. The Initial Service Term and all Renewal Service Terms (if any) are referred to in this Agreement collectively as the “**Service Term**.”

## 8 Termination

### 8.1 Termination of Agreement

Neither Party will have the right to terminate this Agreement without legally valid cause (no termination “for convenience”).

### 8.2 Termination of Order Form or SOW

Either Party may terminate any Order Forms and/or SOW (i) in accordance with their respective terms or (ii) pursuant to the termination provisions in this Agreement: either Party may terminate any Order Forms or SOW for cause upon written notice if the other Party fails to cure any material breach thereof, or any material breach of this Agreement, within thirty (30) days after receiving reasonably detailed written notice from the other Party alleging the breach. For the avoidance of doubt non-payment of an invoice which is due and outstanding shall be deemed a material breach under this provision.

### 8.3 Discontinuity of service: Special Termination Right

In case keylight decides to discontinue the Service or any part of the service, keylight may terminate this Agreement and any Order Form and/or SOW upon six months written notice to the Customer.

### 8.4 Effect of Expiration or Termination of Agreement

The following sections of this Agreement will survive any expiration or termination of this Agreement:

[2 Contract structure and order-of-precedence](#), [3 Ownership of service and customer data](#), [5.2 Use Restrictions](#), [7 Terms of agreements](#), [8 Termination](#), [10 Fees and payment for purchased services](#), [11 Non-production usage](#), [12 Third party interactions](#), [13 Professional services](#), [14.4 Warranty Disclaimers](#), [15 Indemnification](#), [16 Limitation of liability](#), [17 Confidentiality](#), [18 General](#), and [19 Definitions](#).

The applicable Order Forms and SOW may identify additional terms that will survive any expiration or termination of this Agreement.

### 8.5 Effect of Termination of Order Form or SOW

Subject to the exclusive remedy provisions in this Agreement: (a) if Customer terminates an Order Form, SOW and/or this Agreement for uncured material breach in accordance with this Agreement, Customer will be entitled to a refund, on a pro rata basis, of any Fees paid thereunder that are unused as of the termination effective date; and (b) if keylight terminates an Order Form, SOW and/or this Agreement for uncured material breach in accordance with [8 Termination](#), all amounts owed by Customer thereunder will become due and payable.

## 9 Order Process

Customer orders the keylight Service via one or more Order Forms, and Customer may also order keylight's Professional Services via one or more SOW. Customer's Affiliates are also permitted to sign Order Forms and/or SOW with keylight that are governed by this Agreement, in which case all references to “**Customer**” in this Agreement shall be interpreted to refer to the relevant Customer Affiliate for purposes of interpreting

such Affiliate Order Forms and SOW; provided, however, that keylight's maximum liability under [16 Limitation of liability](#) to Customer and all of its Affiliates who sign Order Forms or SOWs under this Agreement shall not exceed, in the aggregate, the limits stated in [16 Limitation of liability](#).

### **9.1 Purchase Orders**

If Customer requires that a purchase order confirmation ("**POC**") be issued before making payment under an Order Form or SOW, keylight shall promptly provide such valid POC conforming to the applicable Order Form or SOW in time for Customer to meet its payment obligations. The terms and conditions of any purchase order (or of any other unilateral Customer document not agreed in writing by authorized representatives of both Parties) will have no effect on the rights or obligations of the Parties, regardless of any failure to object to such terms and conditions.

### **9.2 Modification of Fees Upon Renewal**

keylight reserves the right to modify the Fees for its Service under one or more Order Forms, effective upon commencement of the next Renewal Service Term of the relevant Order Form(s), by notifying Customer of such change in writing at least thirty (30) days before the end of the then-current Service Term, unless Customer notifies keylight in writing, at least twenty (20) days prior to the end of the then-current Service Term, that Customer chooses not to renew such Order Form(s).

## **10 Fees and payment for purchased services**

### **10.1 Fees**

Customer must pay all Fees . Except to the extent otherwise expressly stated in this Agreement or in an Order Form or SOW:

- a. All obligations to pay Fees are non-cancelable and non-refundable; and
- b. Customer must make all payments without setoffs, withholdings or deductions of any kind, unless Customer's counter claim is undisputed or legally established by a court of law.

### **10.2 Invoicing and Payment**

Invoiced Fees are due 15 days from the invoice date, that is, Customer must pay all Fees due under all Order Forms and SOW within fifteen (15) days after Customer receives each invoice. Customer is responsible for providing complete and accurate billing and contact information to keylight and notifying keylight of any changes to such information.

### **10.3 Consequences of Non-Payment**

If Customer fails to make any payments required under any Order Forms or SOW, then in addition to any other rights keylight may have under this Agreement or applicable law:

- a. Customer shall pay interest of one and one-half percent (1.5%) per month on any outstanding balance under each delinquent invoice, or the maximum permitted by law (whichever is less);
- b. keylight will be entitled to recover its reasonable attorneys' fees, other legal expenses (including expert witness fees and expenses on appeal) and other reasonable costs to collect such amounts; and
- c. If Customer's account remains delinquent (with respect to payment of a valid invoice) for thirty (30) days after receipt of a delinquency notice from keylight, which may be provided via email to Customer's designated billing contact, keylight may temporarily suspend Customer's access to the Service for up to ninety (90) days to pursue good faith negotiations before pursuing termination for cause pursuant to



[Section 8.2](#) of this Agreement. Customer will continue to incur and owe all applicable Fees irrespective of any such Service suspension based on such Customer delinquency.

#### **10.4 Payment Disputes**

keylight will not exercise their rights under [10.3 Consequences of Non-Payment](#) above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

#### **10.5 Future Functionality**

Customer agrees that purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by keylight regarding future functionality or features.

## 11 Non-production usage

From time to time, to the extent applicable, Customer may use the Service for evaluation, testing or other purposes where such use is outside a Production Tenant (e.g., by using a Sandbox Tenant or another non-production Service environment). BY USING THE SERVICE ON A NON-PRODUCTION BASIS, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED "AS IS" AND NO EXPRESS OR IMPLIED WARRANTIES, INDEMNITIES OR SECURITY COMMITMENTS ARE PROVIDED BY KEYLIGHT, AND KEYLIGHT EXPLICITLY DISCLAIMS ALL LIABILITY, IN CONNECTION WITH SUCH USE, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT.

## 12 Third party interactions

To the extent use of the Service requires use of third party products or services not made available by keylight (e.g. Oracle Java, Adobe Acrobat, Salesforce CRM, Amazon Web Services and/or a Web browser), Customer may have to separately purchase/license such products or services directly from the applicable third party. In addition, in connection with using the Service, Customer may choose to purchase/license certain other third party products and/or services made available by keylight. Any third party products and services are between Customer and the relevant third parties. keylight does not support, license, control, endorse or otherwise make any representations or warranties regarding any third party products or services under this section, and in no event will keylight have any liability whatsoever in connection therewith.

## 13 Professional services

If Customer wishes to purchase any training, implementation or other professional services from keylight relating to the Service ("Professional Services"), the Parties will mutually execute one or more separate SOW containing the relevant terms and conditions. keylight's Professional Services are separate and apart from the Service, and neither Party's obligations in connection with the Service are dependent in any way on any Professional Services. Except to the extent expressly excluded or amended in writing in any applicable SOW, the following provisions will apply to all SOW:

a. As between Customer and keylight, Customer will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by or for Customer without any contribution by keylight and provided to keylight under the SOW. Customer grants keylight a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, distribute, create derivative works of, and otherwise use such

Customer-owned materials in connection with providing the Service during the Term of this Agreement and otherwise performing its obligations under this Agreement;

b. As between Customer and keylight, keylight will retain all ownership rights in and to all copyrightable works, deliverables, designs, inventions, know-how, software, techniques, trade secrets, work product and other materials created by or for keylight (either alone or jointly with Customer or others) and provided to Customer under the SOW, and any derivative works thereof, excluding any incorporated Customer Confidential Information; and

c. Subject to the terms of this Agreement, keylight grants Customer a non-exclusive, non-transferable, worldwide, royalty-free license to reproduce, perform, display, create derivative works of, and otherwise use internally the keylight Professional Service Materials in connection with the Service during the Term of this Agreement.

Nothing in this Agreement will prohibit, restrict or limit (i) keylight from performing similar Professional Services for any third party, or (ii) Customer from hiring any third party to perform similar Professional Services (though Customer is not permitted to give any third party of keylight access to the Service or any keylight Professional Service Materials without keylight's prior written consent).

## 14 Warranties and Commitments

keylight's warranties are stated in [21 Exhibit A: Support and Service Level Agreement](#). Beyond that, the following provisions apply.

14.1 During the Term keylight warrants ("gewährleistet") that:

14.1.1 its employees, agents, and subcontractors are appropriately qualified and trained to perform the Services in accordance with this Agreement or a relevant Order Form and/or SOW;

14.1.2 it will perform the Services using reasonable skill and care, in accordance with all applicable industry practices and the terms of this Agreement;

14.1.3 will possess and have the right to use:

14.1.3.1 knowledge and expertise sufficient to enable it to provide the Services; and

14.1.3.2 all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialized tools and equipment necessary to enable it to provide the Services;

14.1.4 in performing its obligations under or pursuant to this Agreement, it has obtained, it maintains at its own expense all necessary permits, licenses, authorisations and any other permissions (whether statutory or otherwise) required for the operation of its business subject at all times to any applicable third party license terms which have been notified to Customer or which Customer is aware of;

14.1.5 it will comply with its obligations in respect of confidentiality and security; and

14.1.6 it will notify Customer immediately if it becomes aware of a material breach of any of these warranties.

14.2 keylight further warrants ("gewährleistet") that:

14.2.1 the execution, delivery and performance by it of this Agreement is within corporate capacity and powers;

14.2.2 all requisite resolutions of directors have been duly and properly passed to authorise its execution, delivery and performance of this Agreement; and

14.2.3 there is no law binding on it and no provision in any document binding on it which would prevent it from observing, or would be breached by it observing, any of its obligations contained in this Agreement.

14.3 For Services that are to be deemed as mere professional activities ("Dienstleistungen") all further warranties beyond Clauses 14.1 and 14.2 are excluded. If the Services or parts thereof are subject to statutory warranty claims ("Sachmängelhaftung"), and if the Service in question, or parts thereof, does not comply with the agreed specifications and is therefore defective beyond trivial defects, the following provisions shall apply: (i) Warranty claims shall be excluded if Customer has modified the Services or has not used them in accordance with their documentation or the instructions provided by keylight, unless Customer can demonstrate that the modification(s) and/or the specific use have not caused the defect(s) in question. Further, (ii) for warranty claims to arise hereunder, the alleged defect must be reproducible.

14.4 If warranty claims are not excluded under Clause 14.3, keylight may fix the defect by removing the defect from the Service, by circumventing the defect, or by re-rendering the Service to Customer in a way, that does not contain the defect in question. If keylight does not succeed in remedying the defect within a reasonable time, Customer may set a reasonable deadline; if the deadline runs out without keylight having remedied the defect, Customer shall be entitled to reasonably reduce the Charges, or to terminate the Order Form and/or SOW for cause insofar as it is affected by the remaining defect(s). If Customer raises damage claims instead of, or in addition to, the afore-mentioned rights, Clause 16 shall apply. All costs or efforts incurred by keylight in connection with the correction of defects shall be borne solely by keylight, provided, however, that if a circumstance reported by Customer as a defect to be remedied under this Clause 14 turns out, following keylight's analysis of the reported circumstance, to have been a result of Customer's conduct, Customer shall reimburse keylight at the rates agreed for the provision of keylight's Services.

14.5 NOTWITHSTANDING CLAUSES 14.1 TO 14.4 AND ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE WARRANTY OF CUSTOMER IN THE FOLLOWING CIRCUMSTANCES: (I) WITH REGARD TO DEFECTS OF THE SERVICES THAT KEYLIGHT FRAUDULENTLY CONCEALED (II) WITH REGARD TO GUARANTEES GIVEN BY KEYLIGHT.

14.6 Except where keylight has acted, or failed to act despite having had an obligation to act, with willful or malicious intent ("vorsätzlich") or gross negligence, has fraudulently concealed a defect, or in cases of personal injury suffered from a Service, all warranty claims of Customer against keylight fall under the statute of limitations twelve (12) months after the delivery of the Service in question.

## 15 Indemnification

### 15.1 By keylight

keylight will defend Customer, its Affiliate (if the Affiliate signed the Order Form), officers, directors and employees from and against any claims by a third party (other than Customer or its Affiliates) based on a final decision by a court of competent jurisdiction that use of the Service in accordance with this Agreement and the applicable Order Form(s) infringes a copyright in any country or a patent of the U.S.A., a member state of the European Union, Canada or Australia (collectively, "**Claims**"). keylight will also indemnify Customer and its Affiliates, officers, directors and employees by paying all damages, costs and expenses (including reasonable legal fees and costs) awarded by a court of competent jurisdiction in a final, non-appealable judgment, or agreed in a written settlement agreement agreed in writing by keylight, arising out of such Claims.

If (a) any aspect of the Service is found by a court in a final, non-appealable judgment, or in keylight's reasonable opinion is likely to be found by a court in a final, non-appealable judgment, to infringe upon a third party Intellectual Property Right, or (b) the continued use of the Service is enjoined, then keylight will promptly and at its own expense: (i) obtain for Customer the right to continue using the Service in accordance with this Agreement and the applicable Order Form(s); (ii) modify the item(s) in question to no longer be infringing; or (iii) replace such item(s) with a non-infringing functional equivalent. If, after reasonable efforts, keylight determines in good faith that options (i), (ii) and (iii) are not feasible, keylight will remove the infringing item(s) from the Service and refund to Customer on a pro rata basis any Fees paid by Customer for such infringing element(s) that are unused as of the removal date.

keylight will have no obligation or liability for any Claim under this section to the extent arising from: (x) the combination, operation or use of the Service with any product, device, software or service not supplied by keylight to the extent the combination creates the infringement; (y) the unauthorized alteration or modification by Customer of the Service, or (z) keylight's compliance with Customer's designs, specifications, requests, or instructions in providing Professional Services to the extent the Claim is based on such compliance. In addition, the foregoing obligation does not apply to the extent that such Claims arise from any allegation of or relating to any:

- (a) Third-Party Materials;
- (b) negligence, abuse, misapplication, or misuse of the Content or any deliverables other than by keylight;
- (d) events or circumstances outside of keylight's control (including any bugs, defects, or malfunctions of any third-party software, hardware, firmware, system, or network).

### **15.2 By Customer**

Customer will defend keylight, its Affiliates, officers, directors and employees from and against any claims asserted by a third party based on a breach by Customer of [5 Customer responsibilities](#) of this Agreement. Customer will also indemnify keylight and its Affiliates, officers, directors and employees by paying all damages, costs and expenses (including reasonable legal fees and costs) awarded by a court of competent jurisdiction in a final, non-appealable judgment, or agreed in a written settlement agreement agreed by Customer in writing, arising out of the third party claims described in this section.

### **15.3 Requirements for Indemnification**

Each Party's respective defense and indemnity obligations under [15.1 By keylight](#) and [15.2 By Customer](#) are contingent upon the indemnified Party: (a) promptly giving notice of the third party claim to the defending/indemnifying Party once the claim is known; (b) giving the defending/indemnifying Party sole control of the defense and settlement of the claim and not compromising or settling the claim without the defending/indemnifying Party's approval (though the defending/indemnifying Party must not settle such claim unless the settlement unconditionally releases the other Party of all liability and does not adversely affect the other Party's business or service in a material manner); and (c) providing appropriate information and reasonable cooperation to the defending/indemnifying Party in connection with the claim.

THE FOREGOING ARE THE DEFENDING/INDEMNIFYING PARTY'S SOLE OBLIGATIONS, AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDIES WITH RESPECT TO INDEMNIFICATION AND THE MATTERS ADDRESSED IN THIS SECTION [15 Indemnification](#).

## **16 Limitation of liability**

Neither party shall exclude or limit liability under or in connection with this Agreement for:

16.1.1 death or personal injury; or

16.1.2 fraud or fraudulent misrepresentation.

16.2 keylight shall be liable in accordance with the applicable statutory provisions (whether in contract, tort or otherwise) for damages suffered by Customer that

16.2.1 have been caused as a result of keylight, its legal representatives, its agents or auxiliaries having acted, or having failed to act where there was a duty for keylight to act, in gross negligence or with willful or malicious intent ("vorsätzlich"),

16.2.2 have occurred as a result of a breach of a guarantee (the term "guarantee" in accordance with the applicable statutory meaning);

16.2.3 that are a result of a culpably caused injury to life, limb or health; and/or

16.2.4 that are subject to product liability under the German Product Liability Act.

16.3 In cases of negligence other than gross negligence, keylight shall only be liable for damages that result from breaches of material contractual obligations (whether in contract, tort or otherwise). "Material contractual obligations" are such contractual obligations the compliance with which the respective other party will reasonably expect and which, if breached, jeopardize the achievement of the aim(s) and purpose(s) of the contract. The foregoing limitation of liability shall not apply, however, where the damages result from culpably caused injuries to life, limb or health or a breach of a guarantee:

16.4 In cases of negligence other than gross negligence, keylight 's liability shall also be limited to damages that are typically foreseeable in the context of an Order Form and/or SOW. The foregoing limitation of liability shall, however, likewise not apply where the damages result from culpably caused injuries to life, limb or health or a breach of a guarantee.

16.5 Other than in cases that fall under Clause 16.2, keylight shall not be liable for any indirect, consequential or special damages.

16.6 Other than in cases that fall under Clauses 16.2.1 or 16.2.2, keylight shall not be liable for loss of profits.

16.7 Other than in cases that fall under Clauses 16.2.1 or 16.2.2, keylight 's liability shall also be limited to the remuneration received by keylight during the twelve (12) months immediately preceding the first event giving rise to liability, with respect to the particular Services giving rise to liability under the most applicable Order Form.

16.8 keylight is willing to negotiate higher levels of liability than specified in Clause 16.7 subject to Customer agreeing the remuneration that reflects this increase. In the absence of any agreed increase in liability, Customer acknowledges that keylight's limit of liability, taking into account the availability of insurance and any other relevant considerations, is fair and reasonable.

16.9 Except for keylight 's liability under Clause 16.2 all liability claims of Customer against keylight fall under the statute of limitations twelve (24) months after the delivery of the Service in question.

16.10 The provisions of this Clause 16 shall survive termination of this Agreement, however arising.

# 17 Confidentiality

## 17.1 Definition

As used in this Agreement, “**Confidential Information**” means information and materials provided by the Disclosing Party (“**Discloser**”) to the Party receiving such information or materials (“**Recipient**”) that (a) are identified as confidential at the time of disclosure, or (b) a reasonable person in the relevant industries should understand to be confidential based on the nature of the information and materials and all other relevant factors. For the avoidance of doubt, Customer’s Confidential Information includes, without limitation, the Customer Data and Customer’s non-public business plans, and keylight’s Confidential Information includes, without limitation, all pricing terms offered to Customer under any Order Form, keylight’s non-public business plans, all non-public aspects of the keylight Technology, and the results of any evaluation of the Service performed by or on behalf of Customer for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

## 17.2 Purpose

Recipient must not use any of Discloser’s Confidential Information for any purpose other than carrying out Recipient’s obligations or exercising its rights under this Agreement (the “Purpose”). For the avoidance of doubt, use of Confidential Information by keylight [in connection with the Services and keylight’s improvement of service offerings] in an aggregated and anonymized manner that does not include Personal Data is not prohibited.

## 17.3 Permitted Disclosures and Obligations

Recipient also must not disclose to any third party any Confidential Information, other than to Recipient’s Affiliates, contractors and consultants who (a) need to know such information in order to fulfill the Purpose, and (b) are bound by confidentiality obligations substantially similar to Recipient’s under this Agreement (each Party is fully responsible for its respective Affiliates’, contractors’ and consultants’ compliance with this Agreement). Recipient must treat all Discloser Confidential Information with the same degree of care Recipient gives to its own Confidential Information, but not less than reasonable care. Further, neither Party may disclose publicly the existence or nature of any negotiations, discussions or consultations in progress between the Parties without the prior written consent of the other Party. Recipient and its Affiliates, contractors and consultants who receive Confidential Information hereunder must: (i) not use any such Confidential Information to compete with Discloser or in any other way except as reasonably necessary for the Purpose; (ii) not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects received from Discloser under this Agreement that embody Confidential Information; (iii) promptly notify Discloser of any unauthorized use or disclosure of its Confidential Information of which Recipient becomes aware; and (iv) reasonably assist Discloser in remedying any such unauthorized use or disclosure. For the avoidance of doubt, a security breach involving Customer Data will be governed by [6.3 Security of the Service and Compliance](#), and not [17 Confidentiality](#).

## 17.4 Exclusions

Recipient’s obligations under [17 Confidentiality](#) will not apply to any Discloser Confidential Information that Recipient can prove: (a) is or becomes part of in the public domain through no fault of Recipient; (b) is rightfully in Recipient’s possession free of any confidentiality obligation; (c) was independently developed by Recipient without use of any Discloser Confidential Information; or (d) is communicated by Discloser to an unaffiliated third party free of any confidentiality obligation. A disclosure by Recipient of any Confidential Information (i) in response to a valid order or other legal process issued by a court or other governmental body having jurisdiction, (ii) as otherwise required by applicable law, or (iii) necessary to establish the rights of either Party under this Agreement will not be a breach of this Agreement if, to the extent legally

permitted, Recipient gives Discloser prompt notice and reasonable cooperation so Discloser may seek to prevent or limit such disclosure.

### **17.5 Ownership and Destruction of Confidential Information**

As between Discloser and Recipient, all Discloser Confidential Information is the property of Discloser, and no license or other rights are granted or implied hereby. All materials provided to Recipient by Discloser, whether or not they contain or disclose Confidential Information, are Discloser's property. Promptly after any request by Discloser, Recipient will (a) destroy or return to Discloser all Confidential Information and materials in Recipient's possession or control, and (b) upon written request by Discloser, confirm such return/destruction in writing; provided, however, that the Recipient may retain electronic copies of any computer records or electronic files containing any Discloser Confidential Information that have been created pursuant to Recipient's standard, reasonable archiving and backup practices, as long as Recipient continues to comply with this Agreement with respect to such electronic backup copies for so long as such Confidential Information is retained.

### **17.6 Export**

Exchange of Confidential Information under this Agreement is subject to all applicable export laws and regulations. Except to the extent permitted by a separate written agreement, the Parties will not disclose any information requiring an authorization to be exported. Each Party also specifically agrees to comply with all applicable laws, regulations, orders and sanctions relating to prohibitions or limitations on relationships or transactions with prohibited countries or individuals.

### **17.7 Confidentiality Period**

Recipient's obligations with respect to Discloser's Confidential Information under [17 Confidentiality](#) will remain in effect for the term of this Agreement and for three (3) years after any expiration or termination of this Agreement.

## **18 General**

### **18.1 Governing Law and Dispute Resolution**

This Agreement is governed by German law. Any disputes, actions, claims or causes of action arising out of or relating to this Agreement or the Service will be subject to the exclusive jurisdiction of the courts located in Berlin, Germany. Other than with respect to seeking injunctive relief in connection with matters that qualify for such an extraordinary remedy under applicable law, neither Party may initiate any litigation against the other Party until after providing clear written notice of its intention to do so and first making a good faith effort to resolve the dispute informally through escalation to an appropriate level of executive management of both Parties for at least thirty (30) days after providing such notice.

### **18.2 Assignment & Other Transfers**

Neither Party may assign, sublicense or otherwise transfer (by operation of law or otherwise) this Agreement, or any of a Party's rights or obligations under this Agreement, to any third party without the other Party's prior written consent, which consent must not be unreasonably withheld, delayed or conditioned; provided, however, that upon written notice to the other Party, either Party may assign or otherwise transfer this Agreement in whole, along with all associated Order Forms and SOW (and all its rights and obligations thereunder), (a) to a successor-in-interest in connection with a merger, acquisition, reorganization, a sale of most or all of its assets, or other change of control, or (b) to its Affiliate.

Notwithstanding anything to the contrary in this section, however: (i) in the event of any permitted transfer by Customer under this section to a competitor of keylight, keylight will have the right to terminate this

Agreement, including all associated Order Forms and SOW, for cause under [8 Termination](#) (in the event of such a termination, keylight will promptly refund to Customer, on a pro rata basis, all Fees prepaid by Customer under all Order Forms and SOW then in effect that are unused as of the termination effective date).

In the event of a transfer by Customer that is permitted under this section, the rights granted under this Agreement shall continue to be subject to the same usage limitations that applied under applicable Order Forms prior to the transfer (e.g., any transaction volume terms, and any limitations to particular Customer legal entities, business units, projects, brands, products and/or services set forth therein). Any purported assignment or other transfer in violation of this section is void. Subject to the terms of this section, this Agreement will bind and inure to the benefit of the Parties and their respective permitted successors and transferees.

### **18.3 Force Majeure**

If either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (other than payment obligations) due to any cause beyond its reasonable control, e.g., war, riots, labor unrest, fire, earthquake, flood, national health emergencies hurricane, other natural disasters and acts of God, Internet service failures or delays, and denial of service attacks (collectively, "**Force Majeure**"), the affected Party's performance will be excused for the resulting period of delay or inability to perform.

### **18.4 Marketing**

keylight is permitted to identify Customer as a keylight customer on keylight's website(s) and marketing materials.

### **18.5 Independent Contractors**

The Parties are independent contracting parties. Neither Party has, or will hold itself out as having, any right or authority to incur any obligation on behalf of the other Party. The Parties' relationship in connection with this Agreement will not be construed as a joint venture, partnership, franchise, employment, or agency relationship, or as imposing any liability upon either Party that otherwise might result from such a relationship.

### **18.6 Notices**

All notices (e.g., notice of termination of this Agreement or an Order Form based on an alleged material breach) required under this Agreement must be delivered to the other Party in writing (a) in person, (b) by nationally recognized overnight delivery service. With respect to all other notices, Customer may email keylight at [legal@keylight.de](mailto:legal@keylight.de). Either Party may change its notice address by giving written notice to the other Party.

### **18.7 Anti-Corruption**

Customer acknowledges it has not received or been offered any illegal or otherwise improper bribe, kickback, payment, gift or other thing of value by any keylight employee, representative or agent in connection with this Agreement. Customer will use reasonable efforts to promptly notify keylight at [legal@keylight.de](mailto:legal@keylight.de) if Customer becomes aware of any circumstances that are contrary to this acknowledgement.

### **18.8 Execution**

This Agreement may be signed electronically and in counterparts, in which case each signed copy will be deemed an original as though both signatures appeared on the same document.



### 18.9 Entire Agreement

This Agreement, together with any applicable Order Forms and SOW (including any other terms referenced in any of those documents), comprises the entire agreement between Customer and keylight regarding the subject matter of this Agreement, supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding such subject matter, and may only be modified by a document signed by authorized representatives of both Parties.

### 18.10 Severability

If one or more of the terms of the agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

## 19 Definitions

As used in this Agreement:

**"Affiliate"** means a company, corporation, individual, partnership or other legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement. For purposes of this definition, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity;

**"Business Day"** means any weekday other than a bank or public holiday in Berlin, Germany;

**"Business Hours"** means the hours of 9:00 am until 6:00 pm CET on a Business Day;

**"Confidential Information"** shall have the meaning set forth in Clause 17.1.

**"Content"** means the audio and visual information, documentation, software, products and services contained in or made available via the Service, other than Customer Data and Customer Confidential Information;

**"Customer Data"** means any data, information or material received by the Service from Customer or Customer's Users in the course of accessing or using the Service;

**"Fees"** means the fees and charges in accordance with this Agreement and each mutually executed Order Form and SOW;

**"Intellectual Property Rights"** means rights under any copyright, patent, trademark, trade secret and other intellectual property laws worldwide;

**"keylight Technology"** means all of keylight's and its licensors' proprietary technology that keylight makes available to Customer as part of or in connection with the Service (including, without limitation, any and all software, hardware, products, processes, APIs, algorithms, user interfaces, trade secrets, know-how, techniques, designs and other tangible or intangible technical material or information);

**"Non-Production Tenant"** means any Tenant that is not the Production Tenant;

**"Normal Communication Channels"** means the online channels through which keylight normally communicates important information to its customers, e.g., the email address(es) provided by Customer;

**"Personal Data"** means information relating to a natural person as such term is defined by the applicable Privacy Laws.);

**"Privacy Laws"** means all laws and regulations regarding data privacy and transmission of Personal Data that apply to keylight's provision of the Service to Customer (e.g., storing and processing Customer Data in connection with the Service);

**"Production Tenant"** means a Tenant that Customer is permitted to use to process live Customer Data for production use in accordance with the applicable Order Form;

**"Sandbox Tenant"** means a Non-Production Tenant identified as an "Sandbox Tenant" (or its equivalent, if renamed) on the applicable Order Form.

**"Service"** means the keylight SaaS service for subscription commerce and subscription management, accessible via <http://www.keylight.de> and/or another web site or IP address designated by keylight. "Service" also includes, without limitation, all other components of the applicable Service, and all related Content and keylight Technology;

**"SOW"** means Statement(s) of Work, Work Authorization(s) or other contract(s) under which keylight provides its Professional Services, if any;

**"Tenant"** means a single, discrete operational environment within keylight's SaaS environment in which Customer may use the Service.

**"User(s)"** means Customer's customers, employees, representatives, consultants, contractors and agents who have been authorized by Customer to use the Service.

**-- SIGNATURE PAGE FOLLOWS --**

# 20 Execution

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives identified below.

**Customer**

Authorized Signature	
Name	
Title	
Date	

**keylight GmbH**

Authorized Signature	
Name	
Title	
Date	

# 21 Exhibit A: Support and Service Level Agreement

## 21.1 Support Contacts

Customer will appoint designated support contact person(s) knowledgeable regarding the Service for purposes of contacting keylight’s support team about technical support issues with the Service, including reporting such issues via keylight’s designated support portal / channel.

## 21.2 Non-Production Tenants

For all support issues relating to keylight’s Non-Production Tenants, keylight will make reasonable efforts to respond promptly to all tickets submitted through keylight’s designated support portal / channel, in any event within two (2) Business Days after receipt. If keylight fails to meet this response time commitment, Customer’s exclusive remedy and keylight’s sole obligation will be: (a) for keylight to make reasonable efforts to respond promptly after Customer notifies keylight that it failed to meet this response time commitment; and (b) if keylight fails to meet this response time commitment five (5) times during a 3-month period, for Customer to terminate the applicable Order Form and receive a refund, on a pro rata basis, of any Fees paid for the Non-Production Tenant(s) that are unused as of the termination effective date.

## 21.3 Production Tenants

### 21.3.1 Response Time Commitment

For all support issues relating to keylight Production Tenants, keylight will respond in accordance with the following table.

Severity Level	Response Commitment
0	2 Hours (seven days per week)
1	4 Hours (seven days per week)
2	12 Hours (during Business Days)
3	Two (2) Business Days

The “Severity Levels” are defined below. “Response Commitment” is the maximum time within which keylight will respond to each support issue reported by Customer.

### 21.3.2 Remedies for Breach of Response Time Commitments

If keylight fails to meet the response time commitments above, Customer’s exclusive remedy and keylight’s sole obligation will be: (a) for keylight to make best efforts to respond promptly after Customer notifies keylight that it failed to meet the relevant response time commitment; and (b) if keylight fails to meet the relevant response time commitments three (3) times during a calendar quarter, for Customer to terminate the applicable Order Form and receive a refund, on a pro rata basis, of any Fees paid for the Production Tenant(s) that are unused as of the termination effective date.

#### **21.4 Definition of Severity Levels**

Severity Level 0 (Service Unavailability): Customer experiences complete loss of Service, meeting the definition of "Unavailable" below.

Severity Level 1 (Severe Issues): Customer experiences a severe defect or configuration issue with the Service that materially impacts Customer's business in a negative way (excluding Service failures that qualify as Severity Level 0).

Severity Level 2 (Delayed Performance): Customer experiences transactional and operational slowness in the Service (excluding Service issues that qualify as Severity Level 0 or 1).

Severity Level 3 (Routine Requests): Routine Service support requests relating to issues that don't qualify as Severity Level 0, 1 or 2.

#### **21.5 Assignment of Severity Levels**

keylight will determine the Severity Level assigned to each support issue in its reasonable discretion, but taking into consideration the Severity Level input by Customer.

#### **21.6 Uptime Commitment**

The Annual Uptime Percentage for the Service will be 99.98% (the "**Uptime Commitment**"). Subject to the exclusions described in Section [21.7 Exclusions from Annual Uptime Percentage](#) below, "**Annual Uptime Percentage**" is calculated by subtracting from 100% the percentage of 1-minute periods during any annual billing cycle (i.e., 12 calendar months) in which Customer's Production Tenant(s) is(are) Unavailable out of the total number of minutes in that annual billing cycle. "**Unavailable**" and "**Unavailability**" mean that, in any 1-minute period, all connection requests received by Customer's Production Tenant(s) failed to process (each a "**Failed Connection**"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period. The Annual Uptime Percentage will be measured based on the industry standard monitoring tools keylight uses.

#### **21.7 Exclusions from Annual Uptime Percentage**

Notwithstanding anything to the contrary in this exhibit, any Unavailability issues resulting from any of the following will be excluded from calculation of Annual Uptime Percentage:

- a. Regularly scheduled maintenance of the Service that does not exceed six (6) hours per 3-month period and is communicated by keylight at least 3 days in advance via email notifications to Customer. Unless otherwise communicated, regularly scheduled maintenance time is typically scheduled to occur once per month.
- b. Any issues with a third party service to which Customer subscribes (e.g., salesforce.com, Avalara, or a payment gateway);
- c. Any problems not caused by keylight that result from (i) computing or networking hardware, (ii) other equipment or software under Customer's control, or (iii) the Internet,;
- d. keylight's suspension or termination of the Service in accordance with the Agreement and/or its associated Order Form;
- e. Software that has been subject to unauthorized modification by Customer; or
- f. Negligent or intentional misuse of the Service by Customer.