

TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY SIGNING A QUOTE, CUSTOMER AGREES TO THESE TERMS AND CONDITIONS.

Version: September 2025

These Terms of Service constitute an agreement (the “**Agreement**”) by and between **KATO INTEGRATIONS CORPORATION**, a corporation whose principal place of business is C/O Vela US Holdco Inc., 8770 West Bryn Mawr Ave., Suite 1300, Chicago, Illinois, 60631 (the “**Provider**”) and the corporation, limited liability company, partnership, sole proprietorship, or other business entity executing a Quote with the Provider subject to the terms of this Agreement (the “**Customer**”). This Agreement is effective as of the date Customer signs the applicable Quote (the “**Effective Date**”). Customer’s use of and Provider’s provision of Provider’s Software (as defined below in Section 1.13) are governed by this Agreement.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. “**Associates**” means a party’s officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.
- 1.2. “**Beneficial Use**” means Customer’s production use of the Software solely for its internal business purposes.
- 1.3. “**Confidential Information**” has the meaning set forth in Section 9.1.
- 1.4. “**Customer Data**” means information processed or stored through the Software by Customer or on Customer’s behalf.
- 1.5. “**Customization**” means modifications to the Software which improves or expands the functionality or features of the Software.
- 1.6. “**Defect**” means programming or software design errors which substantially impair the performance utility and functionality of the Software as represented in the Documentation.
- 1.7. “**Documentation**” means Provider’s standard manual related to use of the Software currently posted at <https://katointegrations.com/support/documentation/>.
- 1.8. “**Feedback**” refers to any suggestion or idea for improving or otherwise modifying any of Provider’s products or services.
- 1.9. “**Maintenance Services**” mean the services set forth in Article 4.

- 1.10. **"Quote"** means a written quote outlining access to the Software.
- 1.11. **"Professional Services"** means such Provider services as are set forth in a Quote.
- 1.12. **"Services"** means the Software, Maintenance Services and Professional Services.
- 1.13. **"Software"** means the Provider's software in object code as set out in the applicable Quote.
- 1.14. **"Term"** is defined in Section 14.1 below.
- 1.15. **"Third Party Agreement(s)"** has the meaning set forth in Section 7.3.1.
- 1.16. **"Third Party Product(s)"** has the meaning set forth in Section 7.3.1.
- 1.17. **"Update(s)"** means any patches, workarounds, improvements, corrections, modifications or derivatives to the Software that Provider makes generally available as part of its support service.
- 1.18. **"User"** means any individual who uses the Software on Customer's behalf or through Customer's account or passwords, whether authorized or not.

2. SOFTWARE LICENSE.

- 2.1. License. Provider hereby grants Customer a non-exclusive non-transferable, non-sublicensable, revocable license to use the Software, Software solely for Customer's internal business purposes, in such quantities as are set forth on the applicable Quote provided: (a) Customer complies with the restrictions set forth below in Section 2.2 (*Restrictions on Software*) and (b) Customer complies with the utilization limits set forth in the Quote Such internal business purposes do not include use by any parent, subsidiary, or affiliate of Customer, or any other third party unless authorized by Provider, and Customer shall not permit any such use.
- 2.2. Restrictions on Software. Copies of the Software granted pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, Customer receives no rights to the Software other than those specifically granted in Section 2.1 (*License*). Without limiting the generality of the foregoing, Customer receives no right to and shall not: (a) modify, create derivative works from, distribute, publicly display, or publicly perform, the Software; (b) sublicense or otherwise transfer any of the rights granted in Section 2.1 (*License*); (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Software; or (d) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software, including without limitation as software-as-a-service. Provider grants the license in Section 2.1 (*License*) under copyright and also, solely to the extent necessary to exercise such rights, under patent and any other applicable intellectual property rights.
- 2.3. Documentation. Customer may reproduce and use the Documentation solely as necessary to support Users' use of the License. Customer agrees to periodically consult <https://katointegrations.com/support/documentation/> for any updates to the Documentation to verify for updated Documentation.

- 2.4. Revisions. Provider reserves the right, in its sole discretion, to make any changes to the Services and Documentation that is reasonably necessary to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law.
- 2.5. Users. Customer is responsible and liable for the acts and omissions of Users related to this Agreement and to the products and services provided pursuant to this Agreement, as if they were Customer's own acts and omissions. No other individual, firm, corporation or enterprise is permitted to access or in any way use, directly or indirectly (other than Customer employees, independent contractors and other personnel in conjunction with your internal use as Users) the Software licensed to Customer or made available for Customer use under this license, without Provider's prior written consent which may be granted or withheld in Provider's sole discretion. Customer agrees to: (i) take reasonable steps to prevent the unauthorized or unlawful use of the Software, (ii) to notify Provider promptly of any suspected or actual unauthorized or unlawful use of the Software, and (iii) to provide the Provider with reasonable assistance to remediate or help remediate any such unauthorized or unlawful use.
- 2.6. U.S. Government Restricted Rights. This Section 2.6 applies to all acquisitions of the Software or Documentation by or for the United States federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the Federal government. The Software and related documentation were developed at private expense and are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 (for civilian agencies) and 48 C.F.R. §227.7202 (for Department of Defense agencies), as applicable. Consistent with and subject to 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7702-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only such rights as are granted to all other end-users pursuant to the terms herein. Any provisions of this Agreement inconsistent with federal procurement regulations or other federal law are not enforceable against the U.S. Government. Unpublished rights are reserved under the copyright laws of the United States. Customer shall not remove or deface any restricted rights notice or other legal notice appearing in the Software or on any packaging or other media associated with the Software. This Section 2.6 does not grant Customer any rights not specifically set forth in this Agreement, including without limitation any right to distribute the Software to the United States federal government.
- 2.7. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export the Software to, a country subject to a United States embargo (as of the Effective Date, the Crimea Region of Ukraine, Cuba, Iran, North Korea, and Syria).

3. TESTING AND ACCEPTANCE.

- 3.1. Testing; Installation. Provider will test the Software prior to delivery with respect to design, programming, implementation, Updates and Customization services performed. Customer shall

be solely responsible for validating the suitability of the applications for release and acceptance and agrees to test internally to validate the Software, Third Party Product or Updates. In addition, Customer is responsible for preparing and installing, at its expense, any system configuration and operating environment required to operate the Software, such as power, communications access, etc., per Provider's written requirements for the Software.

- 3.2. Acceptance Period. Customer's acceptance of the Software will be deemed accepted: (i) if Customer fails to notify Provider in writing of its rejection based on a Failure (as defined below), identifying such Failure within thirty (30) days after Customer's receipt of or first access to the relevant Software; or (ii) on the date Customer initiates Beneficial Use of the Software, whichever occurs first. Acceptance will not be delayed for any minor non-conformance (as defined below) with the Documentation or Software. A "**minor non-conformance**" is a minor difference between the Documentation and the Software that has no material impact on the performance of the Software. Acceptance of any Software does not waive any warranty rights provided in this Agreement with respect to such Software or Provider's obligation to perform its obligations under any Quote. If within the thirty (30) day acceptance period Customer notifies Provider of its rejection of the Software for a material failure to deliver or make available such Software (a "**Failure**"), Provider will have thirty (30) days (or such additional time as reasonably necessary) from its receipt of such notice to correct the Failure that Customer has identified, or, refund the License Fee Customer paid, if any, for such Software, and accept the return of the rejected Software, in which case Customer will have no other remedy, and Provider will have no further obligation with respect to such rejected Software or Failure. A Failure will not include any reported deficiency caused by: (i) installation, operation, repair or maintenance, or modification or alteration, of the Software, in whole or in part, by any person or party other than Provider (or a person or party directed by Provider); (ii) installation, operation, repair or maintenance of the Software a, in whole or in part, other than by Provider (or a person or party directed by Provider) or other than in accordance with the Documentation for the Software (or Provider's express instructions); (iii) unusual physical or electronic stress, misuse, power fluctuations, or failures, catastrophe, mishandling, improper or unauthorized use, or misuse, abuse, negligence or accident (other than by Provider or a person or party directed by Provider); (iv) operation with products and/or services not supplied by Provider; (v) connection or operation with Customer's technical or IT infrastructure or a failure to provide a suitable installation or operating environment (as provided under Provider's written requirements); or (vi) failure to use consumables that meet Provider's specifications.

4. SUPPORT AND MAINTENANCE SERVICES.

- 4.1. Support and Maintenance Services. Provider shall provide Customer with support in the form of telephone consultations to answer questions concerning use of the Software and maintenance services to repair Defects (the "**Maintenance Services**"). The Maintenance Services shall be provided between 8:30 a.m. through 5:00 p.m., US Central Time, Monday through Friday (excluding US public holidays).
- 4.2. Customer Cooperation. Customer shall cooperate with Provider by granting access to the Software, and providing data and information reasonably required by Provider for the Maintenance Services.
- 4.3. Maintenance Term. The initial term of maintenance shall commence on the Effective Date and

continue for a period of one (1) year (the “**Maintenance Term**”). Thereafter, the Maintenance Term shall automatically renew on the twelve (12) month anniversary of the Effective Date for successive one-year Maintenance Terms unless either party notifies the other party in writing of its intention not to renew at least sixty (60) days before expiration of the then-current Maintenance Term set out in the applicable Quote.

- 4.4. Maintenance Fees. Customer shall pay Provider the maintenance fees (the “**Maintenance Fees**”) on receipt of the invoice for the Maintenance Services and subsequently thirty (30) days before the expiration of the then current Maintenance Term.

5. PROFESSIONAL SERVICES.

- 5.1. Customization of Software. The scope and fees of the Professional Services required for the customization of the Software shall be mutually agreed to by the Parties in a Quote.
- 5.2. Provision of Professional Services. Professional Services and fees related to such Professional Services shall be set out in a Quote. Provider shall provide the Professional Services, and Customer shall provide any assistance and cooperation necessary or convenient to facilitate the Professional Services, or as set out in a Quote.

6. PAYMENT.

- 6.1. License Fees. Customer shall pay Provider the fees set forth in each Quote (the “**License Fee**”) for each Term. Provider’s invoices are due within 30 days of receipt. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law. Provider will not be required to refund the License Fee under any circumstances.
- 6.2. Disputed Fees. Customer may dispute an invoice or any portion thereof only by (i) submitting a written, detailed, request for invoice review to Accounting@KatoIntegrations.com describing such dispute within fifteen (15) days of the invoice date and (ii) making full payment of all undisputed amounts in accordance with this Agreement.
- 6.3. Taxes. Amounts due under this Agreement are payable to Provider without deduction for any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, “**Sales Tax**”). Except as forbidden by applicable law, Provider may require that Customer submit applicable Sales Taxes to Provider. However, the preceding sentence does not apply to the extent that Customer is tax exempt, provided it gives Provider a valid tax exemption certificate within 30 days of the Effective Date. Provider’s failure to include any applicable tax in an invoice will not waive or dismiss its rights or obligations pursuant to this Section 6.3. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, Customer shall separately pay Provider the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 6.3 does not govern taxes based on Provider’s net income.
- 6.4. Audit. Customer will maintain accurate records regarding your use of the Services until one year following expiration or termination of the applicable Quote. During the term of this Agreement and for one (1) year thereafter, Customer will, not more frequently than annually, make such

information available to Provider within ten (10) days following Provider written request. In addition, Provider may audit your use of the Services for compliance with this Agreement, upon Provider written request, during Customer normal hours of business and upon reasonable advance notice. Customer agrees to cooperate with and assist with the audit including permitting electronic access to all relevant systems and records as we request. Any such audit shall not unreasonably interfere with the conduct of Customer's business. If an audit reveals that Customer's use of the Services is in breach of this Agreement, then Provider may, at its option: (i) charge Customer the applicable additional fees; (ii) require the Customer to take commercially reasonable actions for Customer to be in compliance with this Agreement; or (iii) terminate this Agreement and/or the affected Quote(s) upon no less than ten (10) days' notice to Customer, if Customer fails to cure within thirty (30) days the breach of its use of the Services following written notice to you after completion of such audit. If Provider chooses to charge additional fees, Customer will pay such additional fees promptly upon receipt of Provider's invoice. If the audit reveals an underpayment of more than three percent (3%), Customer agrees to pay all of Provider's out of pocket costs and expenses for undertaking the audit promptly upon receipt of Provider's invoice.

7. CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.

- 7.1. Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Software, including without limitation, by protecting its passwords and other log-in information. Customer shall notify Provider immediately of any known or suspected unauthorized use of the Software or breach of its security and shall use best efforts to stop said breach.
- 7.2. Compliance with Laws. In its use of the Software, Customer shall comply with all applicable laws.
- 7.3. Customer's Use of Third Party Products.
 - 7.3.1. If Customer purchases, licenses, or subscribes to software, services or other technology of third-party providers ("**Third Party Products**") for use in connection with the Software or otherwise in connection with Customer's business, Customer may be required to execute a separate agreement with the third-party provider (a "**Third Party Agreement**"). Customer will be responsible for reviewing, negotiating and executing all Third Party Agreements and for all obligations created under those agreements.
 - 7.3.2. Provider is not responsible or liable for unavailability of the Third Party Products or limitations on the Software's functionality caused by Customer's failure to execute or pay fees required by a Third Party Agreement. Customer recognizes and agrees (a) that Provider has no responsibility or liability under any Third Party Agreement and is not a party thereto; and (b) that Customer's rights and remedies related to Third Party Products come from the third-party providers of those Third Party Products and not from Provider. The provisions above of this Section 7.3 apply to all Third Party Products.
 - 7.3.3. Provider is not and will not be liable for any performance or failure of a Third Party Product.

8. IP & FEEDBACK.

- 8.1. IP Rights to the Software. Provider retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos, and trademarks reproduced through the Software. This Agreement does not grant Customer any intellectual property license or rights in or to the Software or any of its components, except to the limited extent that such rights are necessary for Customer's use of the Software as specifically authorized by this Agreement. Customer recognizes that the Software and its components are protected by copyright and other laws.
- 8.2. Feedback. Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer, or other Users give Provider, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Provider's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer. Feedback will not be considered Customer's trade secret.

9. CONFIDENTIAL INFORMATION.

- 9.1. Confidential Information. "**Confidential Information**" refers to the following items a disclosing party discloses to the receiving party: (a) any document the disclosing party marks "Confidential"; (b) any information the disclosing party orally designates as "Confidential" at the time of disclosure, provided the Disclosing Party confirms such designation in writing within 10 business days; and (c) any other nonpublic, proprietary sensitive information the receiving party should reasonably consider a trade secret or otherwise confidential.
- 9.2. Exclusions. Notwithstanding the foregoing, Confidential Information does not include information that:
- 9.2.1. _____ is in the receiving party's possession at the time of disclosure;
 - 9.2.2. _____ is independently developed by the receiving party without use of or reference to Confidential Information;
 - 9.2.3. _____ becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction;
 - 9.2.4. _____ is approved for release in writing by the disclosing party; or
 - 9.2.5. _____ is or becomes available to receiving party, without restriction, from a source other than disclosing party without breach of this Agreement by receiving party and otherwise not in violation of disclosing party's rights.
- 9.3. Trade Secrets. Customer is on notice that the Provider's Confidential Information may include Provider's valuable trade secrets.
- 9.4. Nondisclosure. The receiving party shall not use Confidential Information for any purpose other than as permitted under this Agreement (the "**Purpose**"). The receiving party:
- 9.4.1. _____ shall not disclose Confidential Information to any employee or contractor of the

receiving party unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with receiving party with terms no less restrictive than those of this Section 9.4; and

- 9.4.2. shall not disclose Confidential Information to any other third party without the disclosing party's prior written consent. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.
- 9.5. Misuse or misappropriation of Confidential Information. The receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information that comes to the receiving party's attention. Notwithstanding the foregoing, the receiving party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The receiving party shall give the disclosing party prompt notice of any such legal or governmental demand and reasonably cooperate with the disclosing party in any effort to seek a protective order or otherwise to contest such required disclosure, at the disclosing party's expense.
- 9.6. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 9.4 above (*Nondisclosure*) will terminate one (1) year after the date of disclosure; provided that such obligations related to Confidential Information constituting Provider's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement or within ten (10) days of the written request from the disclosing party, the receiving party shall return all copies of Confidential Information to the disclosing party or certify, in writing, the destruction thereof. After a 60-day period after termination, Provider has no obligation to maintain any of the Customer Data and may purge all of the Customer Data in its possession. Notwithstanding the provisions in this Section 9.6, the receiving party may retain copies of any Confidential Information: (i) which have been automatically stored via any standard archival or backup procedures; or (ii) retained solely for evidentiary or compliance or corporate governance procedures purposes or as required by law.
- 9.7. Injunction. Each party acknowledges that: (i) its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business, (ii) due to the unique nature of the disclosing party's Confidential Information, monetary damages may not alone be sufficient to compensate disclosing party for any breach by receiving party of its covenants and agreements set forth in this Agreement, and (iii) any violation or threatened violation may cause irreparable injury to disclosing party. In addition to any other remedies that may be available, in law, in equity, by statute or otherwise, disclosing party may seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by receiving party.
- 9.8. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Provider will retain all right, title, and interest in and to all Confidential Information.
- 9.9. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section

1833(b), Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

- 9.9.1. **Immunity.** An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- 9.9.2. ***Use of Trade Secret Information in Anti-Retaliation Lawsuit.*** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

10. CUSTOMER DATA.

- 10.1. **Customer Owned Data.** All Customer Data uploaded by Customer under Customer's account remains the sole property of Customer. Customer grants Provider a non-exclusive license during the term of this Agreement to use, modify, copy and prepare derivative works of the Customer Data for purposes of performing under this Agreement.
- 10.2. **Data Accuracy.** Provider will have no responsibility or liability for the accuracy of data uploaded to the Software by Customer, including without limitation Customer Data and any other data uploaded by Users.

11. REPRESENTATIONS & WARRANTIES.

- 11.1. **From Provider.** Provider represents and warrants that:
 - 11.1.1. it is the owner of the Software and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights to use the Software set forth in this Agreement;
 - 11.1.2. it has the full right and authority to enter into, execute, and perform its obligations under this Agreement; and
 - 11.1.3. it will perform all Professional Services in a professional and workmanlike manner.
- 11.2. **From Customer.** Customer represents and warrants that:
 - 11.2.1. it has the full right and authority to enter into, execute, and perform its obligations under this Agreement;
 - 11.2.2. it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Software; and

11.2.3. it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

11.3. Warranty of Performance. Provider warrants that, during the 90-day period (the “**Warranty Period**”) following Customer’s Beneficial Use, the Software will perform materially as described in its Documentation.

11.4. Warranty Disclaimers. Except to the extent set forth in Sections 11.1 and 12.1, CUSTOMER ACCEPTS THE SOFTWARE “AS IS,” WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

12. INDEMNIFICATION.

12.1. Indemnity from Provider. Provider shall defend, indemnify and hold harmless Customer and the Customer Associates against any “**Indemnified Claim**,” meaning any third party claim, suit, or proceeding arising out of, related to, or alleging infringement or misappropriation of a third party’s patent, copyright, trade secret, or other intellectual property right as a result of Customer’s authorized use of the Software.

12.1.1. *Remedy.* Provider, at its own expense, shall promptly:

12.1.1.1. secure for Customer the right to continue using the Software;

12.1.1.2. replace or modify the Software to make it non-infringing; or if such remedies are not commercially practical in Provider’s reasonable opinion; or

12.1.1.3. refund the fees paid for the Software for every month remaining in the then-current Term following the date after which Customer access to the Software ceases as a result of such breach of warranty.

This Section 12.1 in conjunction with Customer’s right to terminate this Agreement where applicable, states Customer’s sole remedy and Provider’s entire liability for breach of the warranty above in this Section 11.1.

12.1.2. *Termination of Use.* If Provider exercises its rights pursuant to Subsections 12.1.1.1 to 12.1.1.3, Customer shall promptly cease all use of the Software and the Documentation and erase all copies in its possession or control.

12.1.3. *Exceptions to IP Indemnity.* Provider’s obligations set forth in Subsection 12.1.1 above do not apply to the extent that an Indemnified Claim arises out of, relates to, or alleges:

- 12.1.3.1. Customer's breach of this Agreement;
- 12.1.3.2. revisions to the Software made without Provider's written consent;
- 12.1.3.3. Customer's failure to incorporate Updates to the Server that would have avoided the alleged infringement;
- 12.1.3.4. Provider's modification of Software in compliance with specifications provided by Customer; or
- 12.1.3.5. use of the Software in combination with hardware or software not provided by Provider.

12.1.4. *Response to Claims.* In the event of an Indemnified Claim described in Subsection 12.1.1, Provider may exercise any of the rights set forth in Subsections 12.1.1.1 through 12.1.1.3 above, including without limitation its right therein to terminate licenses and require return of the Software.

12.2. Indemnity from Customer. Customer shall defend, indemnify, and hold harmless Provider and the Provider Associates against any Indemnified Claim arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Software, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to infringement or violation of a copyright, trademark, trade secret, or confidentiality right by written material, images, logos or other content uploaded to the Software through Customer's account, including without limitation by Customer Data; and (c) claims that use of the Software through Customer's account, including by Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. INDEMNIFIED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS ARISING OUT OF OR RELATED TO PROVIDER'S NEGLIGENCE.

12.3. Litigation & Additional Terms. The party indemnified above pursuant to this Article 12 ("**Indemnified Party**") shall provide prompt notice of any Indemnified Claim and reasonably cooperate with the other party's ("**Indemnitor's**") defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided: (a) if Indemnitor fails to assume the defense on time to avoid prejudicing the defense, Indemnified Party may defend the Indemnified Claim, without loss of rights pursuant to this Article 12, until Indemnitor assumes the defense; and (b) Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or its Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligation. Indemnitor's obligations in Sections 12.1 and 12.2 will be excused if either of the following materially prejudices the defense: (i) Indemnified Party's failure to provide prompt notice of the Indemnified Claim; or (ii) Indemnified Party's or an Indemnified Associate's failure reasonably to cooperate in the defense.

13. LIMITATION OF LIABILITY.

13.1. Dollar Cap. PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12)

MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE LIMIT OF LIABILITY IN THE PRECEDING SENTENCE IS CUMULATIVE AND NOT PER-INCIDENT.

- 13.2. Excluded Damages. IN NO EVENT WILL PROVIDER BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 13.3. Exceptions. The limitations described in Sections 13.1 (*Dollar Cap*) and 13.2 (*Excluded Damages*) above do not apply to (a) either party's breach of its obligations under Sections 12.1 (*Indemnity from Provider*) and 12.2 (*Indemnity from Customer*), (b) Customer's breach of Sections 2.1 (*License*), 2.2 (*Restrictions on Software*), any Customer infringement or misappropriation of Provider's intellectual property rights, and (c) Customer's failure to pay fees due under this Agreement.
- 13.4. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 13 APPLY TO THE BENEFIT OF PROVIDER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 13 and 11.4 (*Warranty Disclaimer*), Provider's liability will be limited to the maximum extent permissible. If applicable law limits the application of any provision listed in the preceding sentence, each party's liability will be limited to the maximum extent permissible.

14. TERM & TERMINATION.

- 14.1. Term. The term of this Agreement (the "**Term**") will commence on the Effective Date and continue for the period set forth in the Quote or, if none, for one (1) year. Thereafter, the Term will renew for successive one-year periods (each a "**Renewal**"), unless either party refuses such renewal by written notice sixty (60) or more days before the Renewal date.
- 14.2. Termination for Cause. Either party may terminate this Agreement or a Statement of Work for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
- 14.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 8 (*IP & Feedback*), 9 (*Confidential Information*), 11.4 (*Warranty Disclaimers*), 12 (*Indemnification*), and 13 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

15. MISCELLANEOUS.

- 15.1. Insurance. Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general

commercial liability, errors and omissions, employer liability and worker's compensation insurance as required by Law.

- 15.2. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 15.3. Non-Solicitation. Customer shall not directly or indirectly solicit for employment, offer employment to or employ Provider's employees during and for a period of two (2) years following termination of this Agreement. In the event of a breach of this provision Customer agrees that appropriate liquidated damages shall be payment by Customer of one hundred (100%) percent of the new annual compensation of the employed individual.
- 15.4. Marketing. Customer agrees that Provider may refer to Customer and may briefly describe Customer's business on Provider's website. Customer hereby grants Provider a limited license to use any Customer trade name and trademarks only for this purpose.
- 15.5. Notices. Provider may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to: legal@KatolIntegrations.com, and such notices will be deemed received 72 hours after they are sent. In addition, Customer is on notice and agrees that: (a) for claims of copyright infringement, the complaining party may contact Provider's Legal Department at legal@KatolIntegrations.com; and (b) Provider will terminate the accounts of subscribers who are repeat copyright infringers.
- 15.6. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, government orders responding to any of the foregoing, or other causes beyond the performing party's reasonable control.
- 15.7. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's express written consent. Except to the extent forbidden in this Section 15.7, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 15.8. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 15.9. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 15.10. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this

Agreement will be governed solely by the internal laws of the State of Delaware, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Dover, Delaware. This Section 15.10 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

- 15.11. Amendment. Provider may amend this Agreement from time to time by posting an amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "**Proposed Amendment Date**") unless Customer first gives Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Article 14, *Term & Termination*). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Provider may revise the Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted; provided if such amendment materially reduces Customer's rights or protections, notice and consent will be subject to the requirements above in this Section 15.11.
- 15.12. Entire Agreement. This Agreement and any Quote sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.