

Terms of Use

1) General Provisions

- 1.1 These conditions (“**Terms of Use**”) stipulate the detailed conditions under which the **Provider** as stipulated in the Remote Access to Software Contract, provides the other contracting party (“**Client**”) with the Service of remote access to software Clever AIM (defined below as Software), as well as with other potential related considerations.
- 1.2 These Terms of Use become effective on 30/05/2019.

2) Definition of Certain Terms

- 2.1 The following terms used in these Terms of Use or in the Contract (as defined below) have the following meaning:

- (a) Agency – an advertising agency or another party intending to redistribute or redistributing the Service as per this Contract for its Agency Clients in accordance with the terms of this Contract;
- (b) Update – an innovated version of the Software issued by the Provider in response to a Defect and/or containing other changes of a current functionality at the Provider’s discretion.
- (c) API – Software interface for automated exchange of data between the Client’s information systems and the Software. For these purposes, the Provider operates its publicly available API, accessible at <https://api.cleveraim.com>.
- (d) Standard Working Hours – the Provider’s standard working hours in the time zone “Prague/Europe”. Unless stated otherwise in the Contract or SLA, the Standard Working Hours in Working Days are from 9 am to 5 pm.
- (e) Schedule of Charges – the Provider’s schedule of charges containing price and payment terms related to the provision of the Service.
- (f) Datacentre – a Hardware set situated in a particular geographical location and operated by the Provider independently or via its contractual partners.
- (g) Availability – the condition of the Service where the Service is available to Users/Clients; also the condition where Service Unavailability (see below) does not occur.
- (h) Confidential Information – the information related to the Contract, Terms of Use, Software, Subscribers or Users, whether explicitly labelled as confidential or not, information related to the content of the Contract or Terms of Use, of any other contracts, agreements or other provisions concluded in connection with the Contract or replacing this Contract, as amended by their potential attachments, including all annexes, as well as information about all related documents, deeds or other information media in material, electronic, oral or other form, including any information about business activities, employees of the Contracting Party in question, products, business relations and contacts, internal organization of business activities and about internal guidelines, technical equipment or other related facts; a Contracting Party’s Confidential Information means information related to the Contracting Party or to third parties and passed to the other Contracting Party in the extent stated above.
- (i) Hardware – the Provider’s or its contractual partners’ technical infrastructure intended for the operation of the Software or its part. The Hardware is placed in the Datacentres.
- (j) Innovation – new functional features of the Software.
- (k) Agency Client – a party to which the Services as per this Contract are redistributed by the Agency in accordance with the terms of this Contract;
- (l) Critical Defect – a defect of the Software preventing the Client from using the Software as a whole.
- (m) Response Period – the period between the Reporting Date and Time and the moment in which the Provider announces the receipt and registration of the report to the Client or in which the Provider contacts the Client for the purpose of verifying information stated in the report. The Response Period runs solely within the Standard Working Hours.

- (n) Period to Commence Defect Solution – the period between the Reporting Date and Time and the moment in which:
- (i) the Provider arrives to the Place of Performance to perform the Service, if necessary for the removal of the Defect or the Critical Defect;
 - (ii) the Provider starts solving the Defect via remote access to the Client's computer network or, should the Client refuse such access to the Provider, the moment in which the Provider requested permission for remote access to the Client's computer network;
 - (iii) the Provider starts solving the Defect or Critical Defect on the Provider's own infrastructure.
- The Defect Removal Period runs solely within the Standard Working Hours.
- (o) Place of Performance – the Provider's premises, unless explicitly stated otherwise in the Contract. The services are physically provided from the Datacentre.
- (p) Alternative Solution – the Provider's solution of the Defect or measure resulting in:
- (i) temporary removal of the Defect enabling use of the Software in an alternative manner;
 - (ii) definition of the manner of preventing the Defect;
 - (iii) temporary execution of a change; or
 - (iv) adoption of a temporary measure resulting in the desired change.
- (q) Unavailability – the condition where the Service Availability is limited for multiple Users and Clients at the same time and the situation in question is not:
- (i) a planned interruption of the Service,
 - (ii) a condition affecting a particular User or Client caused by a Defect or reasons on the User's or Client's part;
 - (iii) a condition affecting a group of Users or Clients caused by force majeure.
- (r) Subscriber – the Client's customer or other contact whose data the Client has collected and processes in accordance with PDPL within its professional or business activities and to whom the Client sends, by means of the Service, business as well as other announcements within their direct contact.
- (s) PDPL – legislation regulating the protection of personal data, in particular:
- (i) Directive 95/46/EC of the European Parliament and of the Council;
 - (ii) Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield (notified under document C(2016) 4176);
 - (iii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
 - (iv) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);
 - (v) other respective national legislation and legislation of the European Union, regulating the protection of personal data.
- (t) Working Days – Monday to Friday, with the exception of holidays.
- (u) Primary Contact – Client's contact person whose email address must be filled in during registration. Primary contact can be changed anytime in Client's account administration.
- (v) SLA – an agreement on quality of the Service specifying the type of services arranged by the Contracting Parties within the Contract for a particular project, period of time or regional territory.

- (w) Contract – the contract concluded between the Provider and the Client regulating the provision of the Service to the Client and adhering to these Terms of Use.
- (x) Service – the service of remote access to the Software operated on the Provider's hardware for the purpose of its use by the Client.
- (y) Software – the Clever AIM software application, via which Users can send e-mails to the Subscribers and which is made accessible to the Users via Internet on the web interface located at cleveraim.com
- (z) Reporting Date and Time – the date and time when a report of a Defect was received at the Provider's contact addresses.
- (aa) Permanent Solution – the Provider's solution of the Defect resulting in permanent removal of the Defect.
- (bb) User – a natural person or a virtual entity accessing, on the Client's behalf and at the Client's expense, in accordance with the concluded Contract, the Software and working with it within the extent of the assigned rights and options arranged within the Contract.
- (cc) Website – the Internet portal operated by the Provider at cleveraim.com, including all its subdomains.
- (dd) Defect – a condition where the Software shows functional features limiting Users considerably in using the Software; the limitation is not caused by Unavailability. A Critical Defect is also a Defect.

3) Contract

- 3.1 The Contract is concluded in writing, in a documentary form.
- 3.2 The provision of the Service is conditioned by the conclusion of the Contract and by Client's agreement with these Terms of Use including Privacy Policy and Anti-spam Policy.
- 3.3 When closing the Contract Client chooses their login and password. The Provider bears no responsibility for misuse of Client's login details by third party involved by the Client.

4) Subject-Matter of Contract

- 4.1 The subject-matter of the Contract is the Provider's agreement to provide the Client, under the conditions stipulated by the Contract and these Terms of Use, with the Service consisting in remote access to the Software, and the Client's agreement to pay agreed remuneration for the Service.
- 4.2 In the extent in which the Software is made accessible to the Client, the Client is entitled to use the Software, exclusively via remote access and under the conditions stipulated by the Contract.
- 4.3 A part of the Service is securing its Availability as well as the Hotline, Technical Support and Commencement of Defects Solution services, all in the extent according to the Contract and SLA and within the Standard Working Hours.
- 4.4 For the provision of the Service, the Provider is entitled to the price stipulated in the Contract.

5) Terms of Payment

- 5.1 The Service price is payable in monthly instalments on the basis of invoices issued by the Provider.
- 5.2 The remuneration is to be provided via an electronic transfer of funds to the Provider's bank account mentioned in the invoice.
- 5.3 Should the Client be in default of payment of any due amount, the Provider is entitled to be paid a contractual penalty amounting to 0.05% of the outstanding amount for each day of default.

6) Basic Functionality of Software

- 6.1 The basic functionality of the Software is a set of methods, functions, activities and processes delivered to all Clients identically on a joint platform, the "framework".

- 6.2 The following Software features are available to each Client within the basic functionality:
- (a) a centralized system of logging in to the Service, including management of the Users' user rights;
 - (b) a personalised dashboard, i.e. an executive and marketing overview which the User can personalize and which provides the User with overview of performed marketing campaigns;
 - (c) the administration of producing and performing campaigns, incl. a visual editor of campaigns, an HTML editor of campaigns with syntax code highlighting, revision of campaigns, A/B testing options, administration of templates;
 - (d) reporting;
 - (e) the administration of static content, particularly of images and potential campaign attachments;
 - (f) administration of Subscribers;
 - (g) an interface making it possible to create complete backups of the Client's data in a machine-readable form enabling automated processing;
 - (h) transactional emails, recommenders, API.

7) Contracting Parties' Rights and Obligations When Using Service

- 7.1 The Provider is obliged to provide the Client with the Services in the quality and extent stipulated by the Contract.
- 7.2 The Provider is entitled to take appropriate measures aimed at protection of the Software and the Client's and User's data in connection with use of the Service.
- 7.3 The Software is operated solely on the Provider's Hardware. Installation or transfer of any copies of the Software or its part to the Client's infrastructure or technical equipment are prohibited, unless these are temporary copies arising as an integral part of the technological process of the remote access and are necessary for execution of the User's remote access to the Software and use of the Software. For the avoidance of doubts, the Client becomes a rightful acquirer of these temporary Software copies only (not of the Software installed on the Hardware), solely for the period of a particular User's access, no longer than for the duration of the Contract.
- 7.4 In the extent allowed by the legislation and regardless of its technical capacities, the Client agrees not to do the following without the Provider's prior consent in writing:
- (a) use the Software as a whole and its individual parts as well as any temporary copies of the Software available to the Client differently than exclusively in conformity with the Contract;
 - (b) perform decompilation, a reverse analysis or any other examination of the Software as a whole or its individual parts as well as any other temporary copy of the Software available to the Client for a purpose different than its authorized use within the provided Service;
 - (c) perform any decompilation, analysis, reverse development, circumvention or other obstruction of effective technical means of protecting rights, unlocking or any other attempt to identify the source code or used algorithms of the Software as a whole or its individual parts as well as of any temporary copy of the Software available to the Client;
 - (d) perform combination of the Software with any other computer programme and perform changes, adaptations, translation, correction of errors or any other modification of the Software as a whole or its individual parts as well as of any temporary copy of the Software available to the Client; and
 - (e) develop computer programmes derived from the Software or imitating its functionality.
- 7.5 The Client agrees to ensure that the persons using the Service or the Software in the Client's interest or upon the Client's instruction act in accordance with the art. 7.4.
- 7.6 The Client is not entitled to use, directly or via third parties, knowledge of the thoughts, processes, structure, algorithm and used methods on which the Software is based or which it contains, even if the Client acquired the knowledge while rightfully using the Software. The knowledge may neither be used for development, elaboration or commercial use of another computer programme, or for other conduct endangering or violating the Provider's copyright and business interests. The Client is not entitled to use, directly or via third parties, knowledge of the deliverables of any marketing consulting services

provided to the Client in relation to the use of the Software and Client's marketing strategy optimization. The Client is obliged to maintain confidentiality regarding such knowledge.

- 7.7 If content which is, as a whole or in part, a copyright work according to the applicable legal regulation governing copyright is made accessible within the Service and unless stated otherwise for a particular content item, the Client is not granted any licences or other rights for the content beyond the extent necessary for the use of the Service. Neither is the Client entitled to exploit or use otherwise the Provider's databases available within the Service, regardless of whether they enjoy protection according to the applicable legal regulation governing copyright or not; this does not affect use of the databases made by the Client (the Client's data).
- 7.8 Should the provision of the Services and/or the Software and/or the operation and development of the Software be terminated by the Provider or by the Client's decision or should the Contract be terminated, the Provider agrees to provide the Client with the cooperation needed for migration of the Client's data to another solution in the form of necessary data exports, or to ensure consultations over the collaboration. The price for the transfer and configuration of the data is not a part of the remuneration according to the Contract and is to be determined by an agreement of the Parties to the Contract. Without the agreement, the Provider is not obliged to perform the data transfer. Even without the agreement, the Provider is obliged, at no cost and at its own expense, to enable the export of the Client's all data in its specific and documented format.
- 7.9 The Provider is entitled to collect data on the Client's use of the Service. The data include:
- (a) information about the frequency of the use of individual Software functions;
 - (b) error messages by the Software.
- 7.10 The data collected according to art. 7.9 are anonymized and by no means include concrete data created by the User, personal or sensitive data or data on specific Users' activities. However, in divergence from the previous sentence, according to art. 7.9 the data may, in justified cases and in the reasonable extent, also include personal data, provided that the Client gave its express consent and solely for the period of duration of such consent.
- 7.11 The Client acknowledges that all operations with Subscribers' or other parties' data and any communication with Subscribers or other parties made via the Service are performed by the Client by means of the User on the Client's behalf and at the Client's expense, and that this conduct may not be ascribed to the Provider. The Provider is not liable for the content stored by the Client or the User into the Service.
- 7.12 The Client agrees to use the Service in conformity with the legislation, particularly to refrain from:
- (a) committing any criminal activities;
 - (b) unlawful violations of third parties' intellectual property rights;
 - (c) unlawful violations of third parties' personality rights and natural rights;
 - (d) violating PDPL;
 - (e) violating the ban on distribution of unsolicited commercial communication and the Provider's rules (especially the Privacy Policy and the Anti-SPAM Policy).
- 7.13 In the event of reasonable suspicion of breach or provable breach of the Client's obligations according to these Terms of Use, the Contract or the legislation, the Provider is entitled to perform immediate suspension or limitation of provision of the Service, to remove any content uploaded by the Client or to take similar measures that the Provider may deem necessary. The Provider is entitled to provide cooperation to the public bodies in conformity with the legislation. In these cases, the Client is not entitled to apply for a discount on the provision of the Service, claim damages or seek any rights on grounds of its liability for damage or Defects.
- 7.14 The Provider brings attention to the fact that correct functioning of the Software is dependent on a range of factors, especially on proper and sufficient performance and compatibility of the Client's Hardware, on the availability of the Internet connection between the Client and the Datacentre, on the correct functioning of the applications interconnected via API, etc. The Provider bears no responsibility for factors beyond its Hardware and, for that reason, cannot guarantee functioning of the Software under all circumstances. Therefore, the Provider explicitly warns and the Client acknowledges that, regardless of the care on the Provider's part, the Software may have certain features which may lead to Service Unavailability or a Software Defect. Consequently, the Client is obliged in particular to:
- (a) store the data processed by means of the Software duly and sufficiently;
 - (b) take measures in order to prevent that potential Service Unavailability or a Software Defect lead to damage exceeding the Provider's maximum liability for damage according to these Terms of Use or the Contract.

8) Special Provisions Regulating Client's Operating As Agency

- 8.1 The Client is entitled to act as an Agency solely on the basis of the Provider's prior express authorization in writing, from the moment of the Provider's conferring the status of an Agency on the Client to the moment of the Provider's revoking that status. If the Agency status is revoked, the Client is no longer entitled to demand the provision of Services, Other Activities, Work or any other considerations provided by the Provider as per this Contract for the Agency Clients.
- 8.2 In its request to be conferred the Agency status, the Client is obliged to report in which status as per par. 9.13(b) the Client as an Agency and the potential Agency Clients will act for the purposes of the processing of personal data.
- 8.3 Where the Client has the Agency status conferred as per art. 8.1 of this Contract, the provisions of the following subsections of this article are to be applied.
- 8.4 The only subject entitled to demand the provision of Services, Other Activities, Work or any other considerations provided by the Provider as per this Contract is the Agency; the Agency Clients may demand those considerations solely via the Agency.
- 8.5 The Agency is obliged to pay, to the Provider, the price for all the Services, Other Activities, Work or any other considerations provided by the Provider as per this Contract that have been drawn by or provided to the Agency and all Agency Clients as per this Contract. On the basis of the Provider's prior express authorization in writing, the price for the considerations provided as per this Contract to a given Agency Client may be paid directly by the given Agency Client; this, however, does not affect the provisions of the art. 8.7 of this Contract.
- 8.6 The Agency is also obliged
- (a) to oblige the Agency Client to perform the Client's obligations as per this Contract; or
 - (b) unless the issue is determining the Client's rights and obligations, to make sure that the Agency Client acknowledges the relevant provisions,
- in particular as per the following articles of this Contract:
- (a) Subject-Matter of Contract;
 - (b) Contracting Parties' Rights and Obligations When Using Service;
 - (c) Basic Functionality of Software;
 - (d) Processing of Personal Data;
 - (e) Protection of Information;
 - (f) Liability for Defects, Liability for Damage;
 - (g) Individual Development of Software, Innovation and Other Activities;
 - (h) General Solution of Defects;
 - (i) Update;
 - (j) Consumer Information;
- before the Agency Client's first use of the Services at the latest.
- 8.7 The Agency is responsible, to the Provider, for due performance of the obligations by the Agency Client as per these obligations.
- 8.8 The Contract provisions regulating the relationship between the Provider and the Client are to be applied analogously to the relationship between the Provider and the Agency, with the Agency being directly responsible for the payment of the price for the provision of the Services as per this Contract, including the Services whose end recipients will be the Agency Clients.
- 8.9 Should the provisions of this Contract be breached by the Agency Client's acts, the Provider is entitled to apply measures as per this Contract against the Agency Client and its particular subaccount. Should the provisions of this Contract be breached continuously or repeatedly by the Agency Client's acts or should the provisions of this Contract be breached by the Agency, the Provider is entitled to apply measures as per this Contract against the Agency and its account and also against all Agency Clients and their subaccounts. This does not affect the Provider's entitlement to apply, against the Agency, all the Provider's rights arising from the breach of this Contract that the Provider would otherwise have against the Client, even where the provisions of this Contract are breached by the Agency Client.

9) Processing of Personal Data

9.1 When processing the Subscribers' or other persons' ("data subjects") personal data, the Provider acts as a processor under the conditions specified below in this article 9) of the Terms of Use. Where agreed between the Provider and the Client, the Provider may also act as an administrator of this personal data provided that the Client obtains the data subjects' consent and under the conditions specified in that agreement.

9.2 Alongside the Contract, the Contracting Parties, for the purpose of the protection of personal data processed by the Provider (in its capacity as the processor) in the Software, also conclude a contract on processing of personal data, which forms part of this art. 9) of the Terms of Use.

9.3 The Contracting Parties agree that, if needed for compliance with the PDPL requirements, upon request of any Contracting Party they will conclude, without undue delay, a written attachment to the Contract taking such requirements into account.

9.4 Authorization

(a) The Client hereby authorizes the Provider to process the data subjects' personal data provided by the Client within the Service. The Provider is obliged to process the personal data for the Client as per the Client's instructions and in the extent necessary for the due fulfilment of the Provider's obligations resulting from the Contract.

(b) By concluding the Contract, the Client confirms that the personal data subject to the processing are accurate, have been collected in conformity with PDPL, are currently being processed by the Client in conformity with PDPL and that the Client fulfils all duties of an administrator according to PDPL.

9.5 Subject of Processing, Categories of Data Subjects and Type of Personal Data

(a) The subject of processing is the data subjects' personal data listed in these Terms of Use and in the Contract and potentially other data made available by the Client to the Provider relating to the data subjects, in particular contact information, identification information, address information, information on the data subjects' transactions, content of communications, the data subjects' activities relating to the received communications and potentially other data provided by the Client ("**personal data**"). The data subjects are identified or identifiable natural persons whose categories are listed in these Terms of Use and in the Contract.

(b) With the exception of

(i) the processing of special categories of personal data being the Client's main business activity and the Client notifying the Provider in advance of its intention to process, via the Service, these special categories of personal data; or

(ii) the processing of special categories of the personal data not being the Client's main business activity but the Client notifying the Provider in advance of its intention to process, via the Service, these special categories of personal data and the Provider authorizing that intention in advance,

the Client is not entitled to provide the special categories of personal data for processing.

(c) The decisions on the extent of the processing are always made solely by the Client, who is also responsible for ensuring compliance of the determined extent of processing with PDPL.

9.6 Nature and Purpose of Processing

(a) The Provider is to process the personal data in an automated manner, using statistical and analytical methods with the assistance of computer technology. Occasionally, the data may be processed manually.

(b) The Purpose of Processing, as defined by the purpose of the Service, is principally creating individualized communications for the data subjects, sending the communications to the data subjects, evaluating communication results, website traffic analyses and creating related analyses, always per the Client's choice.

9.7 Processing Period

(a) The processing of the personal data is to be performed for the duration of the Contract. The Provider agrees to fulfil the Provider's obligations related to the personal data protection for the entire period in which the Contract is effective, unless the Contract implies that they are to persist even after the Contract ceases to be effective.

(b) Should Client's Subscriber unsubscribe from Client's newsletter, the Client is obliged to export data of such Subscriber from the Software within 30 days after the unsubscribing. After 30

days the Subscriber's data will be deleted by the Provider. The Client is not entitled to re-import the data of the unsubscribed Subscriber within 30 days after the unsubscribing.

9.8 Client's Representation

- (a) By concluding the Contract, the Client, in its capacity as the personal data administrator, represents that, on the date of the conclusion of the Contract, it fulfils duly all its duties according to PDPL, in particular:
- (i) processes the personal data lawfully for the purpose of, in the extent of and using the means and manner according to these Terms of Use; in particular, the Client has received, and has at its disposal, all data subjects' valid consent with the processing of their personal data, should such processing be subject to that duty;
 - (ii) informs the data subjects about the processing of their personal data, in the manner and extent stipulated by PDPL;
 - (iii) enables the data subjects to exercise their rights according to PDPL;
 - (iv) discards all personal data once the purpose for which they have been processed ceases to exist;
 - (v) fulfils all its other duties according to PDPL;
 - (vi) and agrees to fulfil these duties for the entire duration of the Contract.

9.9 Provider's Other Obligations

- (a) When processing personal data, the Provider is obliged:
- (i) to process the personal data exclusively as per the Client's documented instructions; for the avoidance of doubts, processing of personal data in conformity with the Service description arranged within the Contract is deemed to be performed in conformity with the Client's instructions;
 - (ii) to follow the Client's instructions on the issues of transmitting the personal data to a third country or to an international organization, unless such processing is already imposed on the Provider by the law of the European Union or of the member state applicable to the Provider; in that event, the Provider is to notify the Client of this legal requirement before the processing, unless that legislation forbids the notification for important reasons of public interest;
 - (iii) to ensure that the persons authorized to process the personal data agree to maintain confidentiality or that the duty of confidentiality apply to them;
 - (iv) not to include any other processor into the processing without the Client's specific or general permission in writing;
 - (v) taking into account the nature of the processing, to be of assistance to the Client by means of appropriate technical and organizational measures, if possible, for the fulfilment of the Client's duty to respond to the data subjects' requests for exercise of their rights;
 - (vi) to be of assistance to the Client when ensuring conformity with the Client's duties to provide the level of security for the processing, to report personal data security violations to the respective national data protection office and, as the case may be, also to the data subjects, to assess impact on personal data protection and to implement prior consultations with the respective national data protection office, taking into account the nature of the processing and information available to the Provider;
 - (vii) in conformity with the Client's decision, upon terminating the provision of the Service, to delete or return to the Client all personal data and to delete its existing copies, unless the European Union's or the member state's law requires that the personal data in question be stored; and
 - (viii) to provide the Client with all information needed to prove that all duties prescribed by PDPL have been fulfilled;
 - (ix) to enable audits and to contribute to those audits; the Contracting Parties arrange that the Provider has, on its own initiative, audits of the processing made once every 2 calendar years by an independent auditor selected by the Provider; if performance of an additional audit is requested, the Client may ask the Provider to have an audit of the processing, performed by the Provider for the Client, made by an independent auditor as per the previous sentence, but no more than 1x per calendar year;

the Provider's activities under the subparagraphs (v), (vi), (viii) and (ix) are to be paid in accordance with the prices for the provision of these activities as per the Provider's Schedule of Charges included in the Contract.

- (b) In connection with the personal data processing, the Provider keeps records of all categories of processing activities performed for the Client; the records contain the following:
 - (i) the name and contact information of the Provider, of other processors involved by the Provider into the processing, of the Client and of any other personal data administrator concerned, or potentially of the Client's or Provider's representatives and persons authorized for personal data protection;
 - (ii) categories of processing performed for the Client;
 - (iii) information about potential transmission of the personal data to a third country or to an international organization; and
 - (iv) a general description of technical and organizational security measures.
- (c) The Provider agrees, upon the Client's written request, to make the said records available to the Client.

9.10 Involvement of sub-processors

- (a) Regardless of the provision of subpar. 9.9(a)(iv), the Client hereby expressly agrees with the involvement of the following sub-processors:

Processor	Service
Microsoft	Cloud services, hosting
Intercom	Customer support
Clever Monitor s.r.o. (Czech Republic)	Subcontractor which provides the whole Software, if it is not directly the Contractor in the particular Contract

- (b) The Provider is entitled to involve, in the processing, also sub-processors, or replace the sub-processors as per par. 9.10(a) with new sub-processors within the Client's general written permission that the Client hereby grants.
- (c) In the event of modification of the list of its sub-processors, the Provider will notify Client's Primary Contact by email or by notification through the customer account at least 30 day prior to the intended change.

9.11 Security of Personal Data

- (a) The Provider has adopted and maintains such technical and organizational measures so as to prevent unauthorized or random access to the personal data, their change, destruction or loss, unauthorized transfers, their unauthorized processing in another manner as well as other misuse of the personal data.
- (b) The Provider has adopted and maintains particularly the following measures to secure a reasonable level of security:
 - (i) the pseudonymization and encryption of the personal data;
 - (ii) the capacity to ensure constant confidentiality, integrity, availability and resistance of the processing systems and services – the introduced measures and their correct functioning are checked regularly;
 - (iii) the capacity to renew the availability of and access to the personal data in a timely manner and in the event of physical or technical incidents;
 - (iv) the process of regular testing, assessment and evaluation of efficiency of the introduced technical and organizational measures for secure processing;
 - (v) a multilevel firewall;
 - (vi) unauthorized access checks;
 - (vii) the servers containing the personal data are locked in the Datacentres; and
 - (viii) the data are encrypted during the transfer as well as after storing and solely the Provider's authorized persons have access to them.
- (c) Should the Provider discover violations of security of the personal data, it is to report these to the Client without undue delay.

- (d) In the event of termination of the Contract, the Provider or its employees or authorized third parties that came into contact with the personal data are not released from confidentiality. The confidentiality obligation remains in existence for them even after the Contract ceases to be effective, regardless of whether the relationship of the said parties to the Provider remains in existence.
- (e) Upon the Client's instruction and no later than 30 days after the Contract ceases to be effective, the personal data are to be deleted by the Provider; until that moment, the Client is entitled to download a copy of the personal data.

9.12 Joint Provisions

- (a) At the moment of provision of or making accessible any personal data by the Provider to the Client, the responsibility for the protection of the personal data so provided passes to the Client and the Provider is not responsible for any illegal act, damage or other sanction incurred as a result of the processing of those personal data by the Client.
- (b) Should the Provider incur damage (loss as well as non-property damage) as a result of the Client's failure to fulfil its duties according to PDPL, the Client agrees to compensate the damage to the Provider in full. The damages are to consist particularly of (i) compensation for the damage (loss as well as non-property damage) to the data subjects within the meaning of PDPL, and (ii) compensation for penalties imposed by the respective national data protection office or other public body on the Provider.
- (c) Should the Provider incur expenses in connection with providing cooperation to the Client, authorities or data subjects according to these Terms of Use and PDPL or in connection with performing the Client's decisions to which it is authorized, the Provider becomes entitled to be compensated for these expenses, provided that they are spent efficiently.

9.13 Processing of Personal Data Where Client Operates As Agency

- (a) Where the Client has the Agency status conferred as per art. 8.1 of this Contract, the provisions of this art. 9.13 of this Contract are to be applied for the processing of the personal data.
- (b) The administrator of the Customers' personal data may be, depending on particular setting, either:
 - (i) the Agency Client; in such a case, the processor is the Agency and the Provider acts as another party involved in the processing of the personal data;
 - (ii) the Agency; in such a case, the processor is the Provider and the Agency Client may act as the processor, another party involved in the processing of the personal data or an independent administrator of the personal data.
- (c) In the case as per subpar. 9.13(b)(i), the Agency declares that it has been granted, in its capacity as the processor of the personal data, the permission by the Agency Client, in its capacity as the administrator of the personal data, to involve the Provider, in its capacity as another party involved in the processing of the personal data, in the processing of the personal data. The Agency also declares that the contract concluded between the Agency Client, in its capacity as the administrator of the personal data, and the Agency, in its capacity as the processor of the personal data, meets the requirements prescribed by the legal regulations for a contract between an administrator and processor of personal data, and that the Agency, in its capacity as the processor, always proceeds in accordance with these legal regulations.
- (d) In the case as per subpar. 9.13(b)(ii), the Agency declares that the contract concluded between the Agency Client, in its capacity as the processor of the personal data, and the Agency, in its capacity as the administrator of the personal data, meets the requirements prescribed by the legal regulations for a contract between an administrator and processor of personal data.
- (e) For modification of the contractual relationship with the Agency Client, the Agency is entitled to use the provisions of these terms of processing of personal data as per this article **Chyba! Nenalezen zdroj odkazů.**
- (f) The provisions of these terms of processing of personal data as per this article **Chyba! Nenalezen zdroj odkazů.** regulating the relationship between the Provider and the Client are to be applied analogously to the relationship between the Provider and the Agency.

10) Protection of Information

- 10.1 The Contracting Parties are obliged to maintain confidentiality about the other Contracting Party's Confidential Information.
- 10.2 Both Contracting Parties are obliged not to misuse the other Party's provided Confidential Information and material for its own or any third party's benefit and not to provide it to any third party that fails to prove that it is entitled to it.
- 10.3 Information is not deemed Confidential if it has become public without the receiving Contracting Party's intent or omission, if the receiving Party had the information at its disposal legally before the conclusion of the Contract or if the information results from steps that help the receiving Party to obtain such information independently, which the Party is capable of proving with its records or a third party's information.
- 10.4 For a violation of the obligations stipulated in this article, the Party in violation of its obligation is obliged to pay the contractual penalty of 13500 USD (in words: thirteen thousand five hundred American dollars) to the other Contracting Party for each individual violation of the obligation. This does not affect the entitlement to punitive damages in any manner.

11) Liability for Defects, Liability for Damage

- 11.1 The Client acknowledges that non-existence of a functional feature of the Software not explicitly defined by the Provider is not deemed to be a Defect.
- 11.2 The Contracting Parties agree to exert maximum efforts aiming at preventing any damage resulting from Software Defects.
- 11.3 The Client acknowledges that the Provider is not liable for:
- a) Software Defects resulting from unauthorized interventions in the Software;
 - b) unauthorized use of the Software by the Client or third parties;
 - c) use of the Software inconsistent with the instructions and information passed by the Provider or stated in the Software;
 - d) damage caused by no Internet connection or technical problems on Client's side.
- 11.4 The Client also acknowledges that the Provider is not liable for the functioning of the Client's data network, functioning of the public data network (the Internet), functioning of the Client's hardware equipment, for the Client's storing of data, for the condition of the Client's other programme equipment and for third parties' potential interventions into the Client's other programme equipment.
- 11.5 Should the Provider's liability for damage incurred by the Client arise as a result of a Software Defect or of the Provider's violation of the Contract, the Contracting Parties limit the total amount of compensation for the potential damage incurred by the Client as follows: the damages including loss of profits are limited by three times the amount of the Client's monthly fee for the Service exclusive of VAT.

12) Individual Development of Software, Innovation and Other Activities

- 12.1 Apart from Software made available by the Provider to the Client in the extent specified in the Contract, the Provider may also provide the Client with other services or Works (together as "**Work**").
- 12.2 The Work is to be elaborated for the Client upon a written or e-mail order delivered to the Provider ("**Order**"). The total price for the Work must not exceed USD 20,000, excluding the corresponding VAT. Should the calculated price for the Work exceed the amount stated in the previous sentence, the Contracting Parties agree to conclude a separate contract for work for the elaboration of that individual Work.
- 12.3 In the Order, the Client is obliged to specify in detail the subject of Work and the period in which it is to be elaborated by the Provider.
- 12.4 Based on the received Order, the Provider, without undue delay upon its receipt, is to announce to the Client the calculated price of the Other Activities and the period (deadline) necessary for their performance. Once the Order is accepted by the Client in writing, the Provider is to commence immediate elaboration of the Work.
- 12.5 The Provider agrees to always hand the results of the Other Activities (Work) to the Client against a written handover certificate, unless agreed otherwise. Should the Client refuse to take over the Work groundlessly where the Work has no Defects or unfinished aspects that would prevent its use, the Work is deemed to be handed over by the Provider's written notification of the completion of the Work.

- 12.6 The Contracting Parties may also conclude a service agreement. Should the Client request services beyond the scope of the concluded service agreement, the Parties agree, in order to regulate these activities, to conclude an attachment to the concluded service agreement or a new service agreement, failing which the Provider is not obliged to fulfil these requests of the Client. Should the Provider perform these activities requested by the Client without the concluded attachment or the new service agreement, the Contracting Parties arrange the price for these activities according to the Provider's Schedule of Hourly Charges available on the Website.
- 12.7 The price of the services is set in the Provider's Schedule of Charges. The price is payable against an invoice issued by the Provider always on the 15th day of the calendar month following the month in which the services were provided. With each invoice issued for the services, the Provider also agrees to enclose an overview of used prepaid hours, provided that this model of providing services has been arranged by the Contracting Parties. The invoices for the services are to be sent to the Client only electronically to the Client's e-mail address.
- 12.8 Should the Client be in default of paying the price for the services for the period exceeding 30 days, the Provider is entitled to withdraw from the service agreement.
- 12.9 The agreement for prepaid hours for the provision of the services is not to transfer the unused hours to the next calendar month, unless agreed otherwise by the Contracting Parties. If the available number of prepaid hours has been used up in the given calendar month, the Provider is obliged always to notify the Client in writing.
- 12.10 Should the Provider be in default of handover of the Work, the Client is entitled to the payment of a contractual penalty of 0.05% of the price of the Work or its part (including VAT) for each day of default of handover of the Work or its part, with the maximum amount of 10% of the price of the Work or its part. The Client's entitlement to the contractual penalty does not arise for the period in which it is in default of handover, to the Provider, of documentation necessary for the execution of the Work and for the period in which it is in default of takeover of the Work.
- 12.11 The entitlement to damages exceeding the contractual penalty amount is in no way affected by the payment of the contractual penalties stated in this article.

13) General Solution of Defects

- 13.1 The Provider is to ensure removal of Software Defects or Work Defects reported per e-mail to support@cleveraim.com so as to bring the Software or the Work in conformity with the features described in the Contract and/or in the Order accepted in writing. The Client agrees to report all potential Defects per e-mail to support@cleveraim.com.
- 13.2 The Provider is to record, verify and re-confirm the received report to the Client (reporting User) according to the conditions of the Response Period mentioned below.
- 13.3 Particular Response Periods and Defect Removal Periods are given in the following table:

	Response Period	Defect Removal Period
Defect	8 hours	32 hours
Critical Defect	2 hours	12 hours

- 13.4 Upon agreement with the Client, the Provider provides integrated technical assistance including comprehensive technical pro-active support consisting in:
- (a) the detection of the source and cause of Defects including products supplied by third parties;
 - (b) consultation, coordination and assistance during removal of these types of Defects.
- 13.5 The Provider is not liable for the Defects of third parties' products but is obliged to perform active cooperation aiming at the removal of these Defects and, upon agreement with the Client:
- (a) suggests or assesses third parties' methods leading to the removal of the Defects;
 - (b) communicates, on the authority of the Client, with third parties;
 - (c) checks and assesses third parties' information and services provided in connection with the removal of the Defects;
 - (d) coordinates cooperation of the parties involved in the removal of the Defects.

13.6 For the integrated technical assistance and activities performed by the Provider when solving the Defects not consisting in an error of the Software or Work, the Provider is entitled to receive remuneration according to the Provider's Schedule of Hourly Charges provided in the Contract.

14) Update

14.1 The Provider makes Software Updates available in regular as well as irregular intervals, usually once per calendar month.

14.2 Information about future Updates or information about Updates already issued is available usually on-line via the following distribution channels:

- (a) notifications in the Client's section of the application and via a newsletter;
- (b) the Provider's Website;
- (c) social media (Twitter¹, Facebook²);
- (d) for substantial Innovation or substantial changes of Software: personally to the Clients via advisers, business representatives and/or other authorized persons of the Provider's, or at media events or public events.

15) SLA – Service Level Agreement

15.1 Unless stipulated otherwise, the standard Service Availability is 99.8%, which means potential failures in the maximum extent specified below:

- (a) daily – 00:02:53 hours; or
- (b) weekly – 00:20:10 hours; or
- (c) monthly – 01:27:40 hours; or
- (d) yearly – 17:31:54 hours.

15.2 Unavailability is not deemed to be a planned interruption of the Service announced to the Client with a 14 days' notice.

15.3 The Availability is monitored via System Center, an independent tool, and via Zabbix, an internal monitoring tool. In case of discrepancies, the latter tool prevails.

15.4 The measuring is performed from independent Datacentres in the geolocations of Amsterdam, Singapore, New York City and San Francisco or from a Datacentre located in the maximum radius of 500 km from the original location.

16) Reference Clause

16.1 The Contracting Parties have agreed that the Provider may include the Client and its project among the Provider's reference clients and projects.

16.2 The Provider may do so in printed materials, on the Website, in social media (Facebook, LinkedIn, Twitter), in a case study or in publicity space paid by the Provider.

16.3 The Provider may use the following as the reference clause:

- (a) the Client's logo and business name;
- (b) description of services provided to the Client;
- (c) other names, e.g. of persons or products, as mutually agreed.

16.4 In the aforementioned cases, the Provider must fully respect potential graphical and other limitations given by the Client's logo guide, provided that the guide exists and has been made available to the Provider by the Client.

1 [Twitter.com/cleveraim](https://twitter.com/cleveraim)

2 [Facebook.com/cleveraim](https://facebook.com/cleveraim)

17) Concluding Provisions

- 17.1 The Contract is concluded for an indefinite period.
- 17.2 The Contracting Parties are entitled to terminate the Contract by a notice of termination delivered to the other Contracting Party, with the agreed termination period of 3 months commencing on the date of the delivery of the termination notice to the other Contracting Party. However, the Contract cannot be terminated with the notice of termination effective sooner than after 12 months from the date of the Contract conclusion.
- 17.3 All disputes that arise from or in connection with the Contract are to be settled primarily in an amicable manner. Should such disputes fail to be settled within 30 working days of the date on which they arose, they are to be decided by courts having subject-matter and territorial jurisdiction.
- 17.4 Should any provision of the Contract be or become ineffective or invalid for any reason, this is not to result in the invalidity or ineffectiveness of the Contract. The Contracting Parties agree to replace the invalid or ineffective provision in question with such a valid and effective provision whose subject-matter is identical with or as similar as possible to the replaced provision so as to preserve the purport and meaning of the Contract.
- 17.5 In case of discrepancies between the Contract and the Terms of Use, the provisions of the Contract prevail.
- 17.6 At any time at its discretion, the Provider is entitled to change unilaterally these Terms of Use, the Privacy Policy, the Anti-SPAM Policy and all other documents referred to in these Terms of Use or in the Contract; however, under art. 8 of these Terms of Use that regulates the processing of the data subjects' personal data, the Provider is not entitled to change the purpose and the means of the processing of the personal data without the Client's consent. The Provider is obliged to notify the Client of the change of these documents in writing or per e-mail at least 30 days before the change comes into force. Within this entitlement, the Provider may increase the price for the Services provided to the Client, even where the Contract is concluded for a definite period. If this change is performed, the Client is entitled, within 15 days after receiving the Provider's notification of the change, to reject the change and, if the Provider disagrees with the performance as per the existing terms or if another agreement is not reached, to terminate, on these grounds, the Contract in writing, with the termination notice period of 1 month commencing on the date of delivery of the termination notice to the other Contracting Party, even where the Services are provided for a definite period. Where the Client, within this period, does not reject the change and does not terminate the Contract, the Client is deemed to accept the change.