

## TERMS OF SERVICE

### Relating to ELEVEO cloud products

Version 1.4 issued March 2024

#### 1. Introductory Provisions

- 1.1 Eleveo (“**Eleveo**”) is a software developer providing among other products the cloud-based platform software products (“**Products**” or single “**Product**”), a workforce optimisation cloud solution.
- 1.2 These terms of service (“**ToS**”) determine the rights and obligations under any agreement or purchase order on provision of services (“**Agreement**”) concluded between Eleveo as a provider, on the one side, and the purchaser of the Services (defined below) as the client (“**Client**”), on the other side (jointly the “**Parties**”). These ToS form an integral part of any Agreement even if the Agreement does not explicitly refer to them.
- 1.3 Subject to the ToS, in exchange for the relevant fees (Section 8 below), Eleveo shall provide or shall cause to be provided to the Client, the following services (the “**Services**”) to the extent specified in the Agreement:
- (a) access to, and use of, the cloud-based Products;
  - (b) customer care services specified in Service Level Agreement attached as Annex 1 hereto (“**Eleveo Customer Care**”);
  - (c) services purchased by Client from Eleveo and provided by Eleveo or its Contractors, including, but not limited to, professional services, consultancy and training (“**Professional Services**”); and if applicable
  - (d) other services specified in the Agreement, as the case may be.
- 1.4 Eleveo may unilaterally amend these ToS (including any terms and conditions referred to in these ToS and attached as Annexes). The Client shall be notified of any such amendment via e-mail or any other means. Any amendment to the ToS (“**Amended ToS**”) comes into effect upon notification of the Client of the same. By each access to Products and use of the Services by the Client following the notification of the Amended ToS, the Client agrees to be bound by and accepts the Amended ToS.
- 1.5 In the event of a conflict between the Agreement and these ToS, the Agreement shall prevail.
- 1.6 Any terms and conditions referred to in these ToS and/or attached to these ToS as Annexes form an integral part of these ToS. Any reference to these ToS implies also the reference to any of its Annexes or other terms referred to in these ToS.

#### 2. Conclusion of the Agreement

- 2.1 A Client interested in using Products shall contact Eleveo and outline its request to have access to Products and the Services.
- 2.2 Upon the Client’s request Eleveo issues an offer to the Client based on available Billing Models (Section 8 below) (“**Offer**”). These ToS form an integral part of any such Offer.

- 2.3 The Agreement is concluded between the Client and Eleveo upon the acceptance of the Offer by the Client (by way of a purchase order or otherwise) in an e-mail delivered to Eleveo or, as the case may be, by the delivery to Eleveo of a signed copy of the Offer. For avoidance of doubt, by accepting the Offer, the Client expresses his consent to these ToS and acknowledges that these ToS form an integral part of the Agreement. These ToS automatically also apply to any subsequent contractual relationships concluded between the Client and Eleveo, unless otherwise agreed by the Parties in the Agreement in writing.
- 2.4 Notwithstanding the provisions of Section 2.3, the Agreement shall also be deemed concluded upon the payment of any fee related to any Services or any use of Products and/or the Services by the Client.
- 2.5 The Offer is valid for 30 calendar days, unless expressly indicated otherwise in the Offer. Eleveo is not bound to provide the Services referred to in the Offer unless the Agreement has been duly concluded based on the Offer pursuant to Section 2.3.
- 2.6 Without Eleveo's explicit prior written consent, Eleveo is not bound by any terms or conditions other than the Agreement and these ToS (as well as any other terms and conditions referred to in these ToS or the Offer) which the Client might submit upon the acceptance of the Offer. The Parties expressly acknowledge and agree that their contractual relationship in relation to Products and the Services is governed solely by the Agreement and these ToS (as well as any other terms and conditions referred to in these ToS or the Agreement). Eleveo hereby explicitly excludes the possibility for the Client to accept the Offer with an addendum or a variation. Any terms and conditions of the Client are excluded as well.
- 2.7 For the specification and scope of the Services, the concluded Agreement is binding. To the extent requested by Eleveo, the Client shall hand over all relevant and materially correct technical specifications to Eleveo. The Client shall familiarize themselves with all the required functions or qualitative parameters, familiarize themselves with the purpose of the Services and with all the relevant circumstances (including the user interface and operating conditions for which Products are intended).
- 2.8 The Client is responsible for all information, data, specifications and/or documents provided to Eleveo for the purposes of the Offer and/or the provision of the Services (jointly "**Specifications**"). Eleveo is entitled to fully rely on the Specifications and is not obliged to verify or review them.
- 2.9 In the event of uncertainties or discrepancies resulting from the Client's Specifications, or in the event of unclear instructions from the Client provided to Eleveo, Eleveo is entitled to request further Specifications and explanations from the Client and suspend provision of the Services until the discrepancies have been clarified to the satisfaction of Eleveo.
- 2.10 If any Specifications presented or modified by the Client following the conclusion of the Agreement require a change to the scope of the Services or the method of their performance as agreed in the Agreement, or if, during the provision of the Services there appears a need for additional work and/or the Services that Eleveo could not have anticipated from the Specifications at the time of conclusion of the Agreement, the Client undertakes to compensate Eleveo for any such additional work.
- 2.11 The Client declares that he/she has the capacity and, where applicable, has obtained all the necessary permits to conclude the Agreement including these ToS and to perform the Agreement and comply with the commitments thereunder.

### **3. Provision of the Services and Access to Products**

- 3.1 Eleveo will provide access to Products (meaning access to Products user interface) to the Client following the conclusion of the relevant Agreement, however no earlier than within one (1) business day following the day on which the Client has fully paid the payment pursuant to an invoice issued to the Client by Eleveo according to Section 8.3. The access shall be provided by sending access (activation) details to the Client by e-mail. In the event of the Client's delay with the payment of the payment, Eleveo may withdraw from the Agreement pursuant to Section 15.2. The Agreement may specify other conditions to providing access to Products, such as payment of fees other than the advance payment.
- 3.2 After Products are made accessible to the Client, the Client may enter the Products user interface and use its functionalities in accordance with these ToS.
- 3.3 Access to Products will be terminated immediately upon the termination of the provision of the Services (and/or the Agreement). The Client expressly agrees to this arrangement and confirms that Eleveo is not liable for any damage, loss of data or any other harm or inconvenience that the Client may incur as a result of the loss of access to Products.

### **4. Resale of the Services**

- 4.1 Subject to the express written consent of Eleveo, a Client approved by Eleveo as its partner ("**Partner**") may resell the Services (including Products) purchased from Eleveo to its end-user customers (jointly "**End-Users**", or individually "**End-User**"). The End-User is prohibited from reselling the Services.
- 4.2 The Partner agrees to be bound by these ToS (as well as any other terms and conditions referred to in these ToS) to the full extent as any other Client.
- 4.3 The relationship between Eleveo and the Partner is governed by the Agreement and these ToS. If the Partner resells the Services to any End-User, the Partner's relationship with the End-User is governed by the Partner's agreement with such End-User. The Partner agrees and shall ensure that any End-User shall accept and be legally bound to the same extent as a Client vis-à-vis Eleveo by these ToS (and any Amended ToS). These ToS (and any Amended ToS) will then apply to the End-User proportionally, to the extent of all provisions which may be reasonably applied to the relationship between Eleveo and the End-User. The Partner further agrees to ensure that the End-User shall not further resell the Services. The Partner shall be liable to Eleveo for any damage incurred as a result of the failure to make these ToS (to the aforementioned extent) legally binding upon any End-User. In addition, in case of such failure, the Partner shall be liable to Eleveo for any breach of any provision of these ToS by the relevant End-User to the same extent as if Partner itself committed such breach.
- 4.4 Any End-User having accepted these ToS in the extent set forth in Section 4.3 shall have the right to benefit from Eleveo Customer Care as set forth in SLA, save that End-User (unlike the Partner) has no right to receive from Eleveo any credits referred to in Section 5.2 of SLA.

### **5. Rights and Obligations of the Client**

- 5.1 Client agrees to provide Eleveo with all appropriate cooperation in sake of the successful use of Products and the successful provision of Services by Eleveo.
- 5.2 Client undertakes to pay all applicable fees to Eleveo (Section 8) and Eleveo undertakes to provide the Services as set forth in the Agreement and the ToS.
- 5.3 The Client shall provide to Eleveo correct, complete and true contact information when concluding the Agreement for the purposes of the performance of this Agreement, invoicing the provided Services

and the communication between the Parties. Client shall maintain and, if necessary, update his/her contact details by sending the updated details to Eleveo by e-mail.

## 6. Rights and Obligations of Eleveo

- 6.1 Eleveo shall provide the Services, or cause the Services to be provided, in a timely, professional, and workmanlike manner and shall ensure the continuous operation of Products and provision of Services to the extent as specified in Service Level Agreement (“SLA”) which forms Annex 1 and an inherent part to these ToS.
- 6.2 Eleveo makes no warranties, either express or implied, including without limitation any implied warranties of merchantability, or fitness for a particular purpose. Without limiting the generality of the foregoing: (i) Eleveo does not warrant that the Services will be performed without error or omissions or immaterial interruption; and (ii) Eleveo provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Services made by anyone other than Eleveo unless authorized in writing by Eleveo in which case modifications shall be carried out exactly according to Eleveo’s instructions; (b) use of the Services in combination with any operating system, hardware or software forbidden by Eleveo in the Agreement; (c) any service interruptions, including, without limitation, power outages, system failures or other interruptions beyond the control of Eleveo; or (d) reasons that could not be avoided, such as, for instance, force majeure events, accidents, outages of public telecommunication networks, hacking attacks, but also actions necessary to ensure the operation or security of the Services, such as, for instance, hardware maintenance, software upgrades as set forth in the SLA. Eleveo is not liable for outages of Services caused by facts or events listed in the previous sentence, nor is it liable for any losses incurred by the Client as a result of such outages.
- 6.3 In the event of an occurrence of any issue or technical malfunction of Products or the Services whatsoever, the sole remedy shall be the restoration of the error and resolution of the issue as set forth in the SLA.
- 6.4 Eleveo has the right to terminate the Services and deny access to Products (i.e. to withdraw from the Agreement with an immediate effect) in the event that the Client is in default with the payment of any fees for the Services. In the event of such cancellation, Eleveo is not liable to the Client for any loss of data or any other loss or damage or inconvenience resulting from the denial of the access to Products.
- 6.5 Eleveo may use certain third parties to provide services for Eleveo. Contractor is an entity or person-entrepreneur, with whom Eleveo has signed contracts establishing commercial legal relationships and who performs work for Eleveo and under the condition that Eleveo imposed the same level of confidentiality obligations as on its own employees (further as “**Contractor**”).
- 6.6 The Client hereby authorizes Eleveo, at its respective sole expense, but without any prior approval by the Client, to publish such tombstones and such other similar and customary marketing materials or issue press or other media release in respect of this Agreement as Eleveo may from time to time determine in its sole discretion. The foregoing authorization shall remain in effect unless the Client notifies Eleveo in writing that such authorization is revoked.

## 7. Intellectual Property

- 7.1 All information, know-how and copyright incorporated in any manner in Products and/or the Services, in particular, without limitation, any computer programs, algorithms, technical drawings, sketches, plans, documentation, designs, models, samples, protocols, preparations, trademarks, logos (“**Eleveo IP**”), delivered or made available to the Client by Eleveo during the provision of the Services, shall

remain solely the intellectual property of Eleveo. For avoidance of doubt, the Client is not authorized to provide any license, sublicense or assign any right or authorization to use Products and/or the Services in whole or in part unless specified in the Agreement.

- 7.2 For avoidance of any doubt, Eleveo does not provide the Client with any license to Products. The Client may however use Products in line with the purpose for which it was created and for which the access to Products was provided to the Client, i.e. for the purposes of workforce management in line with the Agreement and such in compliance with these ToS and terms and conditions referred to in these ToS. The Client is however prohibited to access the source code, object code, reverse engineer, reproduce, alter or otherwise make Eleveo IP available to a third party or otherwise interfere in any part of Products and/or the Services. Any use (including any disclosure) of any Eleveo IP outside the scope of the purpose for which it has been made available to the Client or beyond the scope expressly provided for in the Agreement is strictly prohibited.
- 7.3 The Client is liable for all content input by him/her when using Products and/or the Services. The Client shall not use Products for any illegal purpose. The Client is responsible for ensuring that he/she does not violate the laws of any applicable jurisdiction, including but not limited to copyright, intellectual property, trademark, design, patent, and related laws. If Eleveo reasonably determines that Products are used by the Client for any illegal or fraudulent activity or that he/she is in breach of this Section 7, then Eleveo may withdraw from the Agreement and deny access to the Client to Products with immediate effect.

## 8. Price and Billing Models

- 8.1 Eleveo shall provide the Services (which includes the access to the use of Products) based on the particular billing model agreed upon in the Agreement which specifies the term of the Agreement and frequency of payments (“**Billing Model**” or “**Billing Models**”).
- 8.2 The fees are indicated without VAT. VAT shall be added to the fee pursuant to the relevant legislation at the amount valid as of the date of the taxable performance.
- 8.3 When the Agreement is concluded, Eleveo shall issue and deliver an invoice to the Client for the respective payment in the respective currency by e-mail to the e-mail address for billing specified by the Client. The invoice due date for the access to the use of Products is 60 calendar days, unless agreed otherwise in the Agreement. The invoice due date for Professional Services is 30 calendar days, unless agreed otherwise in the Agreement. The date of payment is the date on which the payment is credited to Eleveo’s account.
- 8.4 The Client agrees that Eleveo is entitled to issue tax documents in electronic form.
- 8.5 Eleveo shall issue and deliver an invoice for Data Storage Payment and Processing Capacity Payment, if applicable, in the respective currency by e-mail to the e-mail address for billing specified by the Client on a quarterly/yearly basis. The invoice due date for Data Storage Payment and Processing Capacity Payment is 30 calendar days. The date of payment is the date on which the payment is credited to Eleveo’s account.

## 9. Personal Data

- 9.1 In order for Eleveo to provide the Services to the Client in accordance with these ToS, Eleveo may need to process personal data controlled by the Client or End-User. The terms of such processing as

between the Client and Eleveo shall be governed by Annex 2 hereto – Data Processing Agreement (“**DPA**”) which forms part of the Agreement, unless Eleveo and the Client entered into a standalone data processing agreement and unless neither Eleveo nor the Client is required to enter into a data processing agreement, taking into account the nature of Client Data (as defined below) and other aspects of the Services. Where the Client is a Partner, such Partner shall act as a processor for End-Users and Eleveo shall act as the sub-processor for the Partner. By accepting these ToS an End-User and the Partner agree that the DPA shall appropriately apply to the processing between the End-User and the Partner, unless agreed otherwise between them.

9.2 Processing of personal data is further governed by Privacy Policy, unless stated otherwise. The term “**Privacy Policy**” means a document available at website [eveleo.com](https://www.eleveo.com), which describes in detail how we manage, store and handle personal data.

## 10. Client Data

- 10.1 The Client grants the authorization to Eleveo to access, copy and use all data in electronic form input, collected, developed, received, used or stored by Eleveo in such extent as is necessary or reasonable in connection with the provision of the Services stored within the Client’s instance of Eleveo such as content of tables, content of data storage, definition of transformations, configuration of applications, and personal data (“**Client Data**”) for the purpose of providing the Services, subject to the ToS and the Agreement and subject to the following further restrictions: other than in connection with providing the Services.
- 10.2 Eleveo agrees that all Client Data is the exclusive property of the Client and Eleveo hereby waives any interest, title, lien, or right to any such Client Data (except for the authorization granted in Section 10.1). The Client possesses and retains all right, title, and interest in and to Client Data, and Eleveo’s use and possession thereof is solely as Client’s service provider pursuant to the terms of the Agreement. The Client hereby agrees that Eleveo can use Client Data for a further development and improving of Products.
- 10.3 The Client agrees that any Client data may be processed and stored outside of the country where Client operates. Client represents and warrants that he has obtained all consents necessary for Eleveo to collect, access, process, store, transmit, and otherwise use Client Data in accordance with these ToS. The Client shall comply with all requirements of integrity, quality, legality and all other similar aspects in respect of Client Data. Eleveo may, but is not obligated to, review or monitor any Client Data, however Eleveo expressly disclaims any duty to review or determine the legality, accuracy or completeness of Client Data.
- 10.4 Eleveo shall manage Client Data, and cause Client Data to be managed, in accordance with data management and security standards.
- 10.5 The authorization pursuant to Section 10.1 is provided free of charge.
- 10.6 Client Data will be stored for the duration of the Agreement (“**Storage Period**”) from the moment of its saving in AWS. After the Storage Period ends, Client Data is deleted. Client is aware of this fact and expressly agrees to it.
- 10.7 Client agrees to use Products in a market standard way. In case Client’s extensive use causes the need for increased processing capacity, Client agrees to pay the price set in Billing Model (“**Processing Capacity Payment**”). Payment terms are specified in Section 8.5.

## 11. Consultancy and Training

- 11.1 The Client agrees to schedule every session of Consultancy and Training within a reasonable timeframe. This is defined as four (4) months from the day the Client receives an e-mail that the Client was transitioned to the training department. Once this timeframe has passed, session of Consultancy and Training will be closed and considered delivered.
- 11.2 The Client agrees to provide adequate notice for Consultancy and Training session cancellation. Request for rescheduling of any session of Consultancy and Training session shall be delivered as soon as reasonably possible, however at least two days prior to the day the training takes place. If the request is delivered to Eleveo in a timeframe shorter than two (2) business days prior to the training, the Client will be allowed to reschedule only once per every purchased Consultancy and Training session. Any further rescheduling is not possible and in the case of no-show, the Client is not entitled to any monetary refunds or training.
- 11.3 The Client should provide a primary customer contact for scheduling training during the project Kick-Off Call. Project Kick-Off Call is the first contact between the Eleveo Project team and the Customer/Partner project team. The aim of Project Kick-Off Call is to confirm the overall project scope, plan the project timeline and confirm the project staffing. Should this contact change at any point during the project, the assigned Project Manager and the assigned training consultant (hereinafter as “**Consultant**”) should be notified. In the event the Consultant is unable to receive a response after six repeated attempts to reach a given customer contact (three times using the original contact and three additional times if a new contact is provided immediately upon request), the affected training will be closed and considered delivered.
- 11.4 Consulting and Training provided by Eleveo may be provided, in whole or in part, via a third-party tool (Learning Management System, hereafter referred to as the “LMS”). The Client will use the LMS to access videos, instructor led trainings, consulting collateral, and recordings of trainings (made available to the customer for the tenure of the training, not to exceed a four (4) month period from the day the access to LMS is provided to the Client. It is understood that all content accessed through the LMS is the sole property of Eleveo and is not to be downloaded or shared by the Client, the end-user or any other party with access.
- 11.5 For each course of training purchased (a course here is defined as a collection of trainings and/or consulting engagements that correspond to the products purchased by the Client), up to ten (10) users may access the LMS. Additional users may be agreed upon between the Client and Eleveo, subject to additional fees.
- 11.6 Consulting and Training will be provided in English, unless agreed otherwise. The Client is responsible for being prepared to receive Consulting and Training in this language. Consulting and Training cannot be rescheduled due to language barrier.

## 12. Confidentiality

- 12.1 Both Parties undertake that confidential information relating to each of the Parties activities that become known to it during the negotiation of these ToS, its performance or the provision of the Services will not be disclosed or made available to third parties and that neither Party will use such information for its own benefit or to the benefit of third parties, and shall ensure that the confidential

information is adequately protected from unauthorized disclosure. Both Parties shall keep the confidential information in secret and communicate it only to the extent necessary and exclusively to its employees who are using the Software and who need to know this information for this reason. Both Parties agree that such employees shall be bound by confidentiality obligations to the same extent as both Parties hereunder. Confidential information means any information (in particular, however without limitation, any commercial, technical or legal information) with which the Client is familiarized in any way in connection with the collaboration with Eleveo in relation to the Services.

- 12.2 The obligation of confidentiality shall survive the termination of the Agreement until the confidential information becomes generally known, provided that it does not become known through breach of the Client's obligation to protect the confidential information.
- 12.3 Any non-disclosure agreements in effect between Eleveo and the Client shall remain unaffected by the provisions of this Section 11.

### **13. Indemnification**

- 13.1 The Client shall defend, indemnify and hold harmless Eleveo, its officers, directors, and employees from and against any and all claims of any person arising from or relating to: (a) any infringement or alleged infringement by the Client of any Eleveo IP or any third-party intellectual property rights; (b) any leak of or unauthorized access to the Client Data for reasons not directly related to a Eleveo act or omission; (c) the Client Data content, or (d) Client's breach of any obligation or covenant herein (including Section 7.1 of ToS).

### **14. Limitation of Liability**

- 14.1 In no event shall Eleveo be liable for any loss of use, interruption of business, lost profits, or any indirect, special, incidental, or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), strict product liability, or otherwise, even if it has been advised of the possibility of such damages.
- 14.2 Eleveo's aggregate liability to the Client under the Agreement, included any annexes hereto, shall not exceed the fees paid by the Client to Eleveo during the twelve (12) month-period preceding the occurrence of liability.

### **15. Term and Termination**

- 15.1 The Agreement shall be concluded for the term corresponding to a particular Billing Model agreed upon by the Parties in the Agreement. If so agreed by the Parties in the Agreement in writing, the term may be subject to automatic prolongation pursuant to the terms of the Agreement.
- 15.2 Eleveo may withdraw from the Agreement for the following reasons on the basis of a written notice delivered to the Client and effective at the moment of delivery:
- (a) the Client is in default with payment for the Services hereunder to Eleveo for any reason, if the default exceeds 40 days;
  - (b) the Client violates any provision of Sections 7 (Intellectual Property), and/or 12 (Confidentiality) of the ToS;
  - (c) the Client assigns its rights and/or obligations pursuant to the Agreement to a third party without the prior written consent of Eleveo;

- (d) the Client enters into liquidation or files a debtor's petition to initiate insolvency proceedings, or insolvency proceedings are initiated with respect to the Client on the basis of a petition by a third party, and the Client does not, in Eleveo's opinion, sufficiently prove to Eleveo that the insolvency petition filed by such third party is unjustified;
- (e) other reason referred to explicitly in these ToS.

15.3 The Client may withdraw from the Agreement for the following reasons on the basis of a written notice delivered to Eleveo or the Partner and effective at the moment of delivery:

- (a) Eleveo enters into liquidation or files a debtor's petition to initiate insolvency proceedings, or insolvency proceedings with respect to Eleveo are initiated on the basis of a petition by a third party, and Eleveo does not, in the Client's opinion, sufficiently prove to the Client that the insolvency petition filed by such third party is unjustified; or
- (b) Eleveo is in default with the provision of Services pursuant to the Agreement by more than 40 days.

15.4 No withdrawal by either Party hereto is permitted for reasons other than those explicitly set forth in these ToS or the Agreement, i.e. the withdrawal for statutory reasons is explicitly excluded.

15.5 The Agreement may also be terminated based on mutual written agreement of the Parties.

15.6 In case of termination of the Agreement, all payments will become due and Client is not obliged to withhold any payment for ordered Services.

15.7 Client will have access to retrieve his Client Data up to the date of termination at no additional charge. If the Client requires additional time to retrieve his Client Data beyond the date of termination, the Client may request, and Eleveo will grant, a thirty (30) day extension to the Term of the Agreement; provided such request is made on or prior to the termination date. During the extended period, the Client will be charged for their usage in accordance with the applicable Billing Model. Access to Products will be terminated at the end of the extension period, unless the Client requests additional extension period(s) prior to the effective termination date.

15.8 All terms of ToS which, by their nature, are intended to survive termination of this Agreement, will survive termination, including all payment obligations, use restrictions, confidentiality obligations, ownership terms, indemnification obligations, disclaimers, Exclusions and limitations of liability.

## 16. Final Provisions

16.1 The Client undertakes to comply with these ToS, SLA and DPA.

16.2 Further documentation related to Products can be found at <https://help.eleveo.com/>.

16.3 Eleveo means:

- (a) If the Client is based in USA or Canada, Eleveo Inc., company incorporated under the laws of Delaware, with its registered office at 810 Crescent Centre Dr, Ste 220, Franklin, TN 37067.
- (b) If the Client is based outside of USA or Canada, Eleveo a.s., with its registered office at Karolinská 650/1, Karlín, 186 00 Prague 8, Czech Republic, Id. No. 25730151, a joint stock company registered in the Commercial Register maintained by the Municipal Court in Prague, File B 22865.

## 16.4 Governing law and dispute resolution:

- (a) If the Client is based in USA or Canada, all legal relationships arising based on or in connection with the ToS are governed by the laws of Tennessee. The Parties undertake that all disputes arising in connection with the Agreement or these ToS, whatever their nature and cause, will be settled in a conciliatory manner. If such a conciliation agreement is not reached, disputes will be settled by the Courts of Tennessee
- (b) If the Client is based outside of USA or Canada, all legal relationships arising based on or in connection with the ToS are governed by the laws of Czech Republic. The Parties undertake that all disputes arising in connection with the Agreement or these ToS, whatever their nature and cause, will be settled in a conciliatory manner. If such a conciliation agreement is not reached, disputes will be settled by the relevant courts of the Czech Republic.

16.5 In the event that the law allows prorogation and if no other bodies are competent to make a decision in accordance with the relevant legislation, a competent court with a local jurisdiction designated according to the Eleveo's registered seat shall resolve any such disputes.

16.6 Eleveo is entitled to transfer all rights and obligations pursuant to the Agreement, or the Agreement as a whole, to a third party, and the Client hereby gives its prior consent to this. The Client does not have this right.

16.7 The Client is not entitled to unilaterally set off any due or not-yet-due receivables against Eleveo against any due or not-yet-due receivables of Eleveo against the Client.

16.8 Where it is used to express the obligation of any party to ensure that a third party will act or refrain from acting in a certain way, the term "ensure" means that the relevant party to this Agreement undertakes that the third party will fulfil the obligation agreed within the meaning of Section 1769 (second sentence) of the Civil Code, law in effect in Czech Republic.

16.9 If any provision of the ToS becomes invalid or ineffective, a provision whose meaning is as close as possible to the economic purpose of the invalid or ineffective provision shall be applied instead of such invalid provision. The invalidity or ineffectiveness of any provision is without prejudice to the validity and effectiveness of the other provisions. The invalidity or ineffectiveness of any provision only in relation to a particular entity or a group of entities is without prejudice to the validity and effectiveness of such provision with respect to other entities.

16.10 As of the moment of conclusion of the Agreement, the Client declares that it has properly read these ToS, fully understands them, and accepts all their provisions.



### Annexes:

- Annex No. 1      Service Level Agreement
- Annex No. 2      Data Processing Agreement

## ANNEX NO. 1 Service Level Agreement

### 1. Service Levels

1.1 Severity is defined as the impact an issue has on the Client’s ability to conduct business. Restoration targets are based on the severity level assigned to an incident by Eleveo Customer Care.

1.2 Eleveo Customer Care can be contacted by the Client at

#### US Support Center for USA (Nashville, TN)

phone: +1 888 939 4291

e-mail: [ushelpdesk@eleveo.com](mailto:ushelpdesk@eleveo.com)

web: <https://portal.eleveo.com>

#### EU Support Center for the rest of the world (Prague, Czech Republic)

phone: +420 222 554 112

e-mail: [helpdesk@eleveo.com](mailto:helpdesk@eleveo.com)

web: <https://portal.eleveo.com>

1.3 Priority is defined as the designated level of importance and is used as a factor when defining the severity level of an incident.

1.4 Eleveo Customer Care orders issues based on the severity level.

Issue Severity	Definition
1 – Critical impact (code red)	The Client is experiencing a severe problem resulting in an inability to perform a critical business function. There is no workaround.
2 – High impact	The Client is able to perform job functions but performance is degraded or severely limited.
3 – Medium impact	The Client’s ability to perform job functions is largely unaffected, but noncritical functions or procedures are unusable or hard to use. A workaround is available.
4 – Low impact	Product is available and operational; trivial impact to Client’s business operations or Client requires information or assistance on the Eleveo product capabilities or configuration.

1.5 The characteristics set forth in the above table are used to identify the criteria for the severity of a Client’s case. The assigned severity level for an issue may be mutually redetermined by both Eleveo and the Client during the issue resolution process, but Eleveo shall have the final authority as to the actual severity designation.

### 2. Target Initial Response Times

- 2.1 All target initial response times apply to business hours Monday through Friday, 8:00am to 5:00pm Client’s local time. Severity 1 (critical impact incidents) are supported and responded to 24x7x365.
- 2.2 Reproducible errors that cannot be resolved promptly are escalated for further investigation and analysis.

Severity Level	Standard Initial Response Time
1 – Critical impact (code red)	Severe impact or degradation to the Client’s business operations caused by permanent disruption of Products and the Services.  Response target: 30 min. (phone)
2 – High impact	Products and the Services are available and operational; moderate impact to the Client’s business operations.  Response target: 2 business hour (web)
3 – Medium impact	Products and the Service are available and operational; nominal adverse impact to the Client’s business operations.  Response Target: 4 business hours (web)
4 – Low impact	Products and the Services are available and operational; no impact to the Client’s business operations or the Client requires information or assistance on the Products and the Services capabilities or configuration.  Response Target: 1 business day (web)

**3. Time to Restore and Time to Resolve Platform-level Issues**

- 3.1 The objective of Eleveo Customer Care is to restore functionality as quickly as possible.
- 3.2 Time to restore is the amount of time the Client is impacted before functionality is restored. Time to restore targets are based on the assigned severity.
- 3.3 Time to resolve is the amount of time it takes to resolve the root cause of an issue.
- 3.4 Time to restore and time to resolve apply only to Platform Level issues. Issues that impact a single Client are not Platform Level issues.

**4. Target Restoration Times**

- 4.1 Eleveo Customer Care analysts aim to reach restoration of Client’s issue within the following target restoration times.

Severity Level	Restoration Target
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1 – Critical	4 hours
2 – High	2 business days
3 – Medium	5 business days
4 – Low	N/A

## 5. Service Level Agreements and Credits

- 5.1 Eleveo will make the Products and the Services available 24 hours a day, 7 days a week, and use commercially reasonable best efforts to provide 99% uptime, except for the following exclusions (**Uptime Exclusions**): (i) occasional planned downtime at non-peak hours (for which Eleveo will provide advance notice); or (ii) any unavailability caused by circumstances beyond Eleveo’s reasonable control, including unavailability of services of infrastructure provider, failure or delay of Client’s Internet connection, misconfiguration the Client or any third party acting on the Client’s behalf, issues on the Client’s network, or telecommunications services contracted directly by the Client.
- 5.2 However, if the Services’ uptime falls below the following thresholds in any one month billing cycle (not including any Uptime Exclusions), the Client may request a credit within thirty (30) days after the month in which the uptime fell below threshold. In such a case, the Client should contact assigned Customer Success Manager to request credit. Upon Client’s valid request, Eleveo will provide the applicable credit against the following month’s invoice. For annual term contracts, Eleveo will provide the applicable credit refund as a credit to the pre-paid balance or a credit refund, at the Client’s discretion. The End-User (as defined in ToS) may not request any credit from Eleveo. The End-User may however request a credit from the Partner from whom he purchased Products, if so explicitly agreed between the End-User and the Partner in their respective agreement.

Uptime %	Credit %
Below 99.0 %	10 % of the monthly payment
Below 97.0 %	20 % of the monthly payment

## 6. Cooperation

- 6.1 Eleveo’s Technical Support must be able to reproduce errors in order to resolve them. The Client is expected to cooperate and work closely with Eleveo to reproduce errors, including conducting diagnostic or troubleshooting activities as requested and appropriate. Also, subject to the Client’s approval on a support ticket-by-support ticket basis, Clients may be asked to provide remote access to their Products user interface and/or desktop system for troubleshooting purposes.

## 7. Additional Guaranties

- 7.1 Any additional guarantees made with respect to Products and the Services are described in the ToS.

## ANNEX NO. 2

### Data Processing Agreement

This is the Data Processing Agreement as referred to in ToS for the Products and forms part of an Agreement entered into by Eleveo and the Client, as such parties are identified in the Agreement. Capitalized terms have the meaning ascribed to them in ToS.

- 1. Controller and processor.** Eleveo provides the Client with Services that may involve processing of personal data by Eleveo (as a processor or sub-processor – the latter applies if the Client is a Partner) for the Client (as a controller or processor for an End-User) within the meaning of the 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 94/46/EC (General Data Protection Regulation) (the “**GDPR**”).
- 2. Subject-matter and duration of the processing.** The subject-matter of the personal data processing is given by a nature of the Services and it is determined in every single case by the Client (unless the Client is a Partner) or the End-User (if the Client is a Partner). Eleveo processes the personal data in accordance with the instructions of the Client. The Client may give the instructions also by using Products. If the Client is a Partner, Eleveo is hereby instructed to follow the End-User’s instructions given by the End-User using Products as if these were instructions by the Client. The personal data are processed during the term of Services.
- 3. Categories of personal data and categories of data subjects.** Personal data processed by Eleveo for the Client may include, among other information, personal contact information such as name, address, telephone or mobile number, e-mail address, and passwords; information concerning job title and function, and other information about the subject’s engagement with the Client or End-User. Categories of data subjects, whose personal data may be processed by Eleveo for the Client may include, among others, employees or customers of the Client or End-User.
- 4. Purpose of the processing.** The purpose of personal data processing under this Agreement and DPA is the provision of the Services pursuant to the Agreement, as well as improvement of the Services, improvement of user experience while using the Services and improvement of bug discovery and bug fixing.
- 5. Sub-processors.** The Client acknowledges and consents that Eleveo engages Amazon Web Services, Inc., Seattle, WA - USA as sub-processor (while, however, the personal data are not transferred and/or processed outside of the European Economic Area); the purpose of the sub-processing of personal data by the aforementioned entity is the use of their cloud storage capacities. The Client also agrees that Eleveo shall engage with further other processors as reasonably required for the provision of Services to the Client and for an improvement of the Service (“**Sub-processors**”). Eleveo undertakes to assess the established technical and organizational measures of each Sub-processor and their credibility prior to engaging them to the processing and to comply with other obligations under GDPR and this Data Processing Agreement, while engaging the Sub-Processors. Eleveo will provide a list of actual Sub-processors engaged upon written request of the Client.
- 6. Rights and obligation of the Parties.** The Client, as the controller or processor (if the Client is a Partner) of personal data, undertakes to comply with the obligations imposed at it by the GDPR (including, but not limited to, furnishing data subjects with relevant information regarding personal data processing and obtaining consents with processing from data subjects, if there are no other legal reasons for processing). Eleveo undertakes to process personal data in such a manner so as not to violate any provision of the GDPR or any other personal data protection laws and not to cause any violation of the GDPR or any other personal data protection laws by the Client. Eleveo undertakes in particular, but not limited to, to abide by the following GDPR requirements:

1. to process personal data in accordance with the Client's instructions as set out in this Data Processing Agreement and in accordance with any other documented instruction of the Client and to the extent and in compliance with the purpose for which personal data is to be processed;
2. to provide the Client with electronic access to Services which contain the processed personal data in order to allow the Client to respond to and comply with data subjects' requests pursuant to Articles 12 to 22 of the GDPR; should such an electronic access be unavailable to the Client, Eleveo undertakes to follow the Client's detailed written instruction regarding the relevant data subjects' requests;
3. to assist, insofar as this is technically possible, the Client in ensuring compliance with the obligations pursuant to Articles 32 to 36, always, however, subject to the nature of the processing and the information available to Eleveo;
4. to make available to the Client all information necessary to demonstrate compliance with the obligations pursuant to Article 28 of the GDPR, and to allow audits, always, however, within the limits of proportionality, and only if such an audit may not impose a threat to rights of any third party.

6. Eleveo declares, that organizational and technical measures to ensure a security of personal data have been implemented pursuant to Article 32 of the GDPR in order to ensure the level of security appropriate to the personal data processing under this Data Processing Agreement. In particular, Eleveo undertakes to protect personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of transferred, saved or otherwise processed personal data or unauthorized access.

7. Eleveo undertakes to notify the Client without undue delay after having become aware of any breach of security of the processed personal data by an e-mail sent to the contact e-mail address specified in the Agreement, or to any other e-mail address specified by the Client for this purpose in writing.

8. Eleveo undertakes to maintain confidentiality and to ensure confidentiality of all persons who shall within their scope of authorization have access to personal data processed under this Data Processing Agreement.

9. Upon the Client's instruction to so, or once this Data Processing Agreement cease to be effective for any reason, Eleveo undertakes to delete, return or otherwise make available to the Client all the personal data contained within the Services, unless further retention of the processed personal data is prescribed by the law.