

Terms and Conditions
(hereinafter “T&C”)
Version 5.4 – Issued January 2025

1. In these T&C the definition “**Eleveo**” means Eleveo a.s., Id. No. 257 30 151, with official seat at Boudníkova 2514/7, 180 00, Prague 8, the Czech Republic, a company registered and existing under the Laws of the Czech Republic, however in case the license agreement regarding the Software is concluded when you reside in the United States, Canada, Mexico or any state located in the Central or South America, then “Eleveo” means Eleveo Inc., with official seat at 810 Crescent Centre Dr., Ste 220 Franklin, TN 37067 USA.
2. This document states under which conditions you may use Eleveo products. By accepting these T&C, you agree to be bound by the terms and conditions as stipulated in this document.

Article I.
Recitals & Definitions

1. Eleveo is the owner of Eleveo Software products (hereinafter the “**Software**”) and it and its subsidiaries are exclusively authorized to provide licenses for the Software. The term “**Software**” means all software products Eleveo offers, as specified on the Eleveo corporate website at www.eleveo.com in more details.
2. Further definitions read as follows:
 - a) The term “**Acceptance Protocol**” means a form which confirms that the Services were delivered in the agreed scope and the subject of delivery has been accepted by you as fully functional and in use.
 - b) The term “**Consultancy and Training**” means services purchased by you in the form of sessions and forms part of Services, as defined below.
 - c) The term “**Contractor**” has the meaning set forth in Article III. Section 2 (e).
 - d) The term “**Incident**” has the meaning set forth in Article III. Section 5 (a).
 - e) The term “**Defect**” means a state of the software when it is not functioning according to the supplied administrator and user documentation, but the main function of the software is not affected.
 - f) The term “**Eleveo Maintenance Agreement**” means a document which in detail describes support & Maintenance provided by Eleveo.
 - g) The term “**Eleveo Portal**” means a website access to which is enabled to channel partners of Eleveo and which contains relevant information and documentation.
 - h) The term “**End of Support**” means a date after which the certain version of the Software is no more supported by Eleveo. This information can be always found on Eleveo Portal.
 - i) The term “**EULA**” means End User License Agreement.
 - j) The term “**Implementation**” means process which falls under the term Services and contains parts like installation of the Software, configuration of the Software, migration of data and other activities as part of integrating the Software into the workflow of the end-user’s organization.
 - k) The term “**LTS**” means long term supported version of the Software, an installation which does not change in infrastructure requirements for a defined period of time, only regular bug fixes will be provided as patches or minor upgrades to the existing configuration.

- l) The term “**Maintenance**” means access to the latest version of the purchased Software and the right for support. For the Maintenance, you will pay to Eleveo an annual fee that is derived from the price of the Software and specific Eleveo program, if applicable (“**Maintenance Fee**”).
- m) The term “**Privacy Policy**” means a document available at website eleevo.com, which describes in detail how we manage, store and handle personal data.
- n) The term “**Project Documentation**” means a supplementary document provided to you used in case that any Services from Eleveo are required. This document defines mainly, without limitation, the scope of the project, milestones and deadlines.
- o) The term “**Product Documentation**” means documentation provided to you on Eleveo Portal (or in other way, as applicable) and which describes specifics of each Eleveo product in terms of usage, Implementation, technical suitability and other.
- p) The term “**Purchase Order**” means a document that is sent by you to Eleveo, and which confirms the conditions laid down by Eleveo in offer and accepts the offer as is.
- q) The term “**Services**” means services purchased by you from Eleveo and provided by Eleveo or its Contractors, including, but not limited to, professional services, consultancy and training.
- r) The term “**Software**” means any software produced by Eleveo, including software under the brand name Eleveo, or any of its subsidiaries, comprising computer software, any updates to it, all Eleveo and third-party proprietary rights, relevant data carriers and documentation in any form, including, without limitation, electronic form.
- s) The term “**Subscription Services**” means a software licensing and delivery model in which Software is licensed on a subscription basis.

Article II.

Rights and Obligations of the parties

- 1. By virtue of these T&C, you agree particularly to:
 - a) Pay to Eleveo the price of the purchased Software licenses, Maintenance and if ordered, Services provided in connection with the provision of the Software in an amount stipulated in the Purchase Order, or pay for Subscription Services, as ordered;
 - b) Use all possible efforts to ensure remote access for Eleveo to the servers and to the computer network (either yours or of the end user in case of indirect sale) where Software should be installed for the purpose of Implementation and Maintenance of the Software as well as for the purpose of checking the license conditions and provide any other reasonable cooperation for Eleveo to provide agreed Services; Eleveo shall not provide (and shall bear no liability for non-performance of) the Implementation or the Maintenance if you fail to provide such necessary cooperation;
 - c) Protect the interests of Eleveo, particularly not to disclose any information that would cause a negative perception of Eleveo, the Software and solutions or Services provided in connection with the provision of the Software;
 - d) Get acquainted with the Product Documentation and the Project Documentation, as appropriate;
 - e) Acquaint yourself with the license conditions of Eleveo for the Software. In case of indirect sale, acquaint and bind end users to comply with the license conditions, as stipulated in Art. III. Section 2 (a).

Article III. Business Terms and Conditions

1. Supply of the Software

- a) On the basis of a Purchase Order of Software licenses and Implementation of the Software, Eleveo shall implement the Software for you within your computer network (or computer network of the end user in case of indirect sale) within the scope of the number of ordered licenses. In case of indirect sale, the Implementation might be performed by you based on an authorization by Eleveo; in such case Eleveo has no liability to perform the Implementation and any obligations of Eleveo hereunder relating to such Implementation (performed by you) shall not apply and shall be instead applicable to you. Any terms proposed by you that conflict with these Terms & Conditions are expressly rejected unless explicitly agreed upon in writing by Eleveo.
- b) You are obliged to provide cooperation during Implementation based on Product Documentation and as reasonably requested by Eleveo.
- c) For the purpose of Implementation of the Software, you are obliged to ensure:
 - permanent remote access for Eleveo to your servers and computer network (or of the end user in case of indirect sale) where the Software will be implemented, until project acceptance, i.e. accepted delivery of all Services defined in the Project Documentation;
 - that the hardware and software of the computer network is prepared for the Implementation of the Software in accordance with the requirements set forth in the Product Documentation or the Project Documentation, as appropriate, and instructions of Eleveo;
 - that Eleveo or you (whoever is liable to perform the Implementation) receive complete information necessary for the delivery of the Services, i.e. the pre-install info document is filled in and provided to Eleveo or you (whoever is liable to perform the Implementation). Software shall be made available to you on Eleveo Portal (or in other way, as applicable) after Eleveo receives the Purchase Order. Licenses shall be delivered to you or end user (as applicable) immediately after Eleveo receiving the payment of the issued invoice related to the Purchase Order.
- d) Services shall be delivered to you in accordance with the Project Documentation. If it is not upfront agreed between Eleveo and you, the delivery time of Services (applicable to remote delivery) shall commence by default within the following deadlines from the date of acceptance of the relevant Purchase Order by Eleveo:
 - 10 Business Days in case of an Implementation in a new location;
 - 5 Business Days in case of extension of the number of channels at a current branch, where an existing installation is already in operation.

Eleveo shall not be obliged to comply with the aforementioned deadlines if you fail to fulfill any of the obligations stipulated in sub-paragraphs b) and c) above or the Implementation is provided on-site or the Implementation is performed by you based on an authorization by Eleveo.
- e) The Software shall be implemented by remote access if not stated in the Purchase Order otherwise. If traveling on-site is required, additional costs will be applied. Remote Implementation consists of the following:
 - Network topology analysis for Span port configuration (in co-operation with you);
 - Project preparation;
 - Remote installation of purchased Software;

- Documentation for acceptance tests;
 - Remote user training;
 - User documentation;
 - Technical and Project Documentation;
 - Project management.
- f) Following the successful Implementation (and to the extent that the Implementation is not performed by you), Eleveo shall deliver to you an Acceptance Protocol to be executed by Eleveo and you. The Acceptance Protocol may also be executed by e-mail or by other means of remote communication. You shall be obliged to execute the Acceptance Protocol within three days of a request by Eleveo unless the Software shows Defects and you fully informed Eleveo about these problems with their detailed description. In case of such duly reported Defects, you shall execute the Acceptance Protocol within three days of their removal by Eleveo. If you fail to fulfill your obligation to execute the Acceptance Protocol in time, the Software shall be considered delivered on the fourth day after Eleveo's request.
- g) You shall be entitled to perform Implementation of the Software yourself only if you obtain written authorization from Eleveo to this effect. In that case, Eleveo shall provide you with installation Software for the Implementation within 3 Business Days of the date of acceptance of the respective Purchase Order. Unless we mutually agree otherwise, the installation Software shall be provided to you by means of remote access.
- h) Eleveo never does any Work Made for Hire. This means that for all Software, Services and other deliverables you will be granted with a perpetual (not applicable to Subscription Services) royalty-free, worldwide, non-exclusive, irrevocable license to use the intellectual property created by Eleveo, but the intellectual property itself remains in the possession of Eleveo.

2. License Conditions

- a) In case of indirect sale, you shall be obliged to abstain from actually using the Software otherwise than for the purposes of the resale of the Software (and the Implementation, as appropriate) to the end user and accordingly, you shall limit yourself to observing the obligations and restrictions under the EULA and to sublicensing the EULA to the full extent to the end user no later than as of the moment of the sale of the Software to the end user. As part of such sublicense, you shall transfer all obligations and restrictions under the EULA to the end users so that they are bound by them to the same extent as you. You agree that any and all end users of the Software sold by you based on these T&C shall execute the EULA sublicense in the aforementioned extent in writing no later than as of the moment of the sale of the Software by you to the end user. No end user will be permitted to further sublicense or assign the EULA. **You guarantee to Eleveo that any and all end users shall at all times comply with the terms and conditions as set forth in the EULA and you shall ensure such compliance by the end users. In the event that any end user acts at any time in conflict with the EULA, you shall be liable to Eleveo as if you yourself committed the relevant act (irrespective of whether or not you actually complied with the obligation to execute with the relevant end user the EULA sublicense as set forth above in this Section).**

The right to use the Product is limited to its use on the server and computer networks operated by the respective end user.

This letter a) applies only for indirect sale.

- b) You acknowledge that all transactions conducted under these T&C are governed by these T&C. Any terms proposed by you that conflict with these T&C are expressly rejected unless explicitly agreed upon in writing by Eleveo.

- c) You shall ensure that all end users execute the End User License Agreement (EULA) as a condition of using the Software. You agree that the EULA governs all use of the Software, even in the event of a conflict with your terms or agreements.
- d) Your use and sublicensing of the Software are subject to these T&C and the detailed licensing provisions in the EULA.
- e) If you fail to ensure end-user compliance with the EULA, Eleveo reserves the right to:
 - i) Suspend or terminate your licensing rights;
 - ii) Require you to indemnify Eleveo for damages arising from the Customer breach.
- f) In the event that the Software is used in violation of the terms of these T&C or EULA, Eleveo reserves the right to:
 - i) Terminate your license with immediate effect;
 - ii) Seek additional damages or equitable relief as permitted by law.
- g) You shall have no right to:
 - i) Grant sublicenses that extend beyond the terms of these T&C or the EULA;
 - ii) Use the Software for internal purposes other than demonstration or testing;
 - iii) Assign or transfer this license without prior written approval from Eleveo.
- h) Unless expressly provided otherwise by law or by these T&C, you are not authorized to copy, provide or make the Product or its part available to third parties, provide sublicenses and make alterations in the work. You must not further disseminate, publish or make available to third parties the provided documentation or its part without the written consent of Eleveo, you are however authorized to use the text of the documentation when preparing internal instructions or manuals for your employees, in which case Eleveo is not responsible for mistakes in documents derived in such manner.
- i) Retroactive analysis, decompiling and attempts to obtain the source code are not allowed.
- j) All property rights and copyright pertaining to the Software (including all updated and new versions) and its documentation are reserved by Eleveo at all times. The copyright notices in the Software must not be deleted or modified. These T&C do not provide for the transfer of any property rights.
- k) You undertake not to interfere with the Software or utilize it in a way that differs from the means provided by these T&C. You shall not facilitate access to the Software to other persons besides your employees and short-term Contractors working within the premises of you or the end user, if applicable. For the purposes of these T&C, the Contractor is an entity or person-entrepreneur, with whom you or the end user (if applicable) have signed contracts establishing commercial legal relationships and who performs work for the you or the end user (if applicable) and under the condition that you or the end user (if applicable) imposes same level of confidentiality and security obligations as on its own employees (further as “**Contractor**”). You undertake to ensure that your employees and Contractors do not use the Software in a manner that is in breach of these T&C, the EULA, copyright law and international treaties and that unless otherwise explicitly agreed herein, they do not allow third party use in a way that would grant such third party continual access to the Software (timesharing) or access outside your premises or premises of the end user (if applicable) or that the employees do not provide third parties with original media containing the Software, their copies or that they do not make the Software accessible in other ways. You further undertake not to allow usage of or access to the Software to the third parties (besides your employees or Contractors).

- l) In case of indirect sales, the Contractors may use the Software instead of you within the premises of the end user. The Contractors must not use the Software for their own business activities or administrative procedures.
- m) Should the Software be used in a way that is in breach of these T&C by you or the Contractor, you undertake to inform Eleveo immediately in writing and to offer due co-operation in investigating such a breach.
- n) You undertake to make every possible effort not to allow anyone to hide, alter or suppress any copyright or other property right notification or to fail to duly designate an authorized copy of the Software. Use of the Software in places besides the agreed upon locations and allowing unauthorized person remote access to the Software is permissible only with the prior written consent of Eleveo.
- o) You undertake to assume responsibility to Eleveo for any breach of these T&C or misuse of the Software by persons (including end users, if applicable) whose access to the Software was made possible by you or due to the breach of these T&C by you.
- p) In case of Subscription Services, licenses are granted for a limited period of time. After the subscription period, the Software ceases to work. Maintenance is included in Subscription Services. Following clauses of these T&C shall not apply for the Subscription Services: Article III. Section 3 (c), (d), (e). License additions for end users are allowed for Subscription Services.
- q) In case of upgrade to Subscription Services from commercial licensing model, you will be upgraded to the latest LTS. All previously purchased commercial licenses are retained by you, however no longer supported by Eleveo.

3. Maintenance of the Software

- a) Detailed description of the support is in Eleveo Maintenance Agreement.
- b) Maintenance, support and development shall be provided in Business Days during Eleveo's normal Business Hours. Business Hours are from 9:00 a. m. to 6:00 p. m. local time of the assigned Support Center (the "**Business Hours**"). The emergency support for P1 issues shall be provided 24/7 when reported via telephone contact. A business day means Monday, Tuesday, Wednesday, Thursday and Friday (the "**Business Day**"). Support shall be provided via phone and e-mail with next Business Day reaction on problem solving.
- c) Maintenance renewal must be done annually in advance of the expiration of the original Maintenance period. In case there is no Purchase Order or renewal payment for subsequent periods prior to the expiration of the Maintenance period, Eleveo reserves the right to suspend Maintenance on the day following the day of the expiration of the Maintenance period. Maintenance renewals must be for all licensed Software. Partial renewals are not accepted.
- d) License additions in case you (or the end user, as applicable) have an outstanding Maintenance term are not allowed during the Maintenance yearly term. If the Maintenance renewal for additional yearly term is fully expected, license additions may be allowed with provisions (for example, you may be required to supply a Purchase Order for the Maintenance renewal in advance of the Purchase Order for the incremental licenses). If Maintenance has lapsed and license additions are contingent on having expired products in use, Maintenance renewal is required. The Maintenance term and fees for license additions may be agreed by Eleveo to be prorated in order to allow Maintenance for all Software licensed by you (or the same end user, as applicable) to be co-terminated. Eleveo may require more than 12 months for co-termining to be accepted. This does not apply to Subscription Services.
- e) Any additional services related to Maintenance can be used as long as the Maintenance is current or they have to be converted to service plan with a regular charge. Any requests for 24x7 Support and/or Service Level Agreements beyond the Standard Software Maintenance will be negotiated

on an individual basis for an annual or co-term fee that will match the existing Maintenance term.

- f) The Maintenance term is counted from the moment the Purchase Order is placed, unless stated otherwise in the related Offer.

4. Price and Maturity

- a) The prices for Implementation and Maintenance of the Software include exclusively Implementation and Maintenance of the Software by means of remote access. In cases where it is necessary to perform Implementation or provide Maintenance of the Software in some other manner, the price for these activities shall be stipulated by our mutual agreement.
- b) The Software and Maintenance (or in case of Subscription Services, the first subscription period) will be invoiced immediately after accepting the Purchase Order. Period for which Subscription Services or Maintenance begins in the moment the Purchase Order placed by you is accepted by Eleveo.
- c) Minimum subscription period for Subscription Services is one year. Payments can be done minimum quarterly up-front.
- d) Services will be invoiced in accordance with the conditions defined in the Project Documentation using one of the following possible scenarios:
 - Upfront – All Services will be included in the invoice for Software and related Maintenance;
 - 50/50 split – First half of the price for Services will be included in invoice for Software and related Maintenance (or in case of Subscription Services, the first subscription period), the second half of the price for Services will be invoiced upon project acceptance, i.e. accepted delivery of all Services defined in the Project Documentation;
 - Milestone payments – 30 % of the price for Services will be included in invoice for Software and related Maintenance (or in case of Subscription Services, the first subscription period), 50 % of the price for Services will be invoiced after installation of the Software, remaining 20 % of the price for Services will be invoiced upon project acceptance, i.e. accepted delivery of all Services defined in the Project Documentation.

In case no scenario defined above is selected in Project Documentation, Offer or Purchase Order, all services shall be invoiced and paid upfront, as defined above.

- e) If the delivery of Services is delayed or interrupted for reason on your (or end-user's, as applicable) side and the delay exceeds three (3) months compared with the original schedule described in the Project Documentation, the invoices for the remaining price for Services will be issued immediately regardless the milestones and/or project acceptance date defined in the Scope of the Work.
- f) All invoices will be due and payable within thirty (30) days after issuance. All amounts shall be considered to be paid on the date when it is credited to Eleveo's bank account specified in the invoice. Following does not apply to subscription services: If you order Maintenance of the Software for the subsequent calendar years, you are obliged to pay to Eleveo not only the Maintenance Fee for the years for which Maintenance of the Software is ordered, but if applicable, also the amount which equals the Maintenance Fee for all the previous periods of time, for which Maintenance of the Software was not ordered. In case of indirect sale, you shall not be entitled to make the payment of the relevant amount conditional upon payment by the end user.
- g) If not stated otherwise in writing, the price does not include any hardware.

- h) If any amount is not paid in due time, as specified above, you shall be obliged to pay, upon written request of Eleveo, a contractual penalty in the amount of 0.05% of the outstanding amount per day, until the outstanding amount is fully paid.
- i) Invoices will be sent via electronic delivery (e-mail) in a portable document format. If you require a paper invoice with stamp and signature, you can contact Eleveo. Invoices can be mailed by airmail as well. Invoices will be paid by wire transfer to bank account number and in currency specified in the relevant invoice. Currencies accepted by Eleveo: EUR, USD, GBP and CZK.

5. Technical support of the Software

- a) Eleveo agrees to provide you with technical support and service in case of unexpected problems and events - incidents. An **“Incident”** shall mean a state of the Software when it is not functioning in accordance with its intended purpose. The sole and exclusive remedy for any Incident is restoring the Software to a functioning state pursuant to the terms of the Eleveo Maintenance Agreement available online on Eleveo Portal. In the event an Incident occurs, you are entitled to contact Eleveo at any time by the means described in the Article III. Section 6. The Incident must not be caused by unprofessional intervention by you or end users or external attack. If the Incident is caused by unauthorized intervention by you or end users or by an external attack or if the Incident is found in the version of the Software that reached End of Support, the provisions of these T&C on Incidents shall not apply to any such Incident.
- b) You are entitled to obtain Eleveo technical support and service only if the Maintenance Fee was purchased and duly paid and only within the scope of its obligations pursuant to Article III. Sections 3 and 5 of these T&C. This does not apply to subscription services.
- c) With respect to the Article IV. hereof, in no case shall Eleveo be liable to you or your customers (if applicable) or any third parties for any damage incurred as a consequence of use of the Software or as a consequence of its defects or malfunctioning, including, without limitation, lost profits, damage caused by loss of data, loss of business opportunity, etc.
- d) Provision of Eleveo technical support and service shall be governed by Eleveo Maintenance Agreement, available online on the Eleveo Portal.

6. Manner of reporting in case of Incidents

US Support Center for USA (Nashville, TN)

phone: +1 888 939 4291
e-mail: 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
web: <https://portal.eleveo.com>

7. Consultancy and Training

- a) You agree to schedule every session of Consultancy and Training within a reasonable timeframe. This is defined as four (4) months from the day you receive an e-mail that you were transitioned to the training department. Once this timeframe has passed, session of Consultancy and Training will be closed and considered delivered.
- b) You agree 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, you 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, you are not entitled to any monetary refunds or training.

- c) You 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.
- d) 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”). You 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 you. 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 you, the end-user or any other party with access.
- e) 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 you), up to ten (10) users may access the LMS. Additional users may be agreed upon between you and Eleveo, subject to additional fees.
- f) Consulting and Training will be provided in English, unless agreed otherwise. You are responsible for being prepared to receive Consulting and Training in this language. Consulting and Training cannot be rescheduled due to language barrier.

Article IV. Liability

- 1. Except to the extent that liability may not be excluded or limited by applicable law, and subject to the remainder of this Article IV., Article III. and V., Eleveo shall not be liable to you (or any end user, if applicable) for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with these T&C, use of the Software, the Services, the Maintenance or otherwise.
- 2. Eleveo shall not be liable to you (or any end user, if applicable) for consequential loss or damage, including but not limited the loss or damage to other equipment or property or for loss of profit, business, revenue, goodwill, data or anticipated savings.
- 3. Eleveo’s aggregate liability to you in connection with these T&C (whether in contract, tort or otherwise), including liability arising as a result of any exclusion contained in these T&C being held to be invalid for any reason, shall be limited to an amount equal to 100% of the total value of all Purchase Orders placed in the previous 12 months between Eleveo and you as of the moment of the occurrence of the relevant liability, provided that this limitation shall not apply to liability under Article IV. Section 4.
- 4. Notwithstanding any other provision of these T&C, Eleveo does not exclude liability for death or personal injury to the extent that the same arises from its willful misconduct or gross negligence.

Article V. Intellectual Property Rights

- 1. You acknowledge that any and all of the copyright, trademarks, design rights, database rights, patents and other intellectual property rights (“**Intellectual Property Rights**”) used or subsisting in or in connection with the Software and any parts thereof are and shall remain the sole property of

Eleveo or such other party as may be identified therein or thereon (the “**Owner**”) and you shall not during or at any time after the completion, expiry or termination of these T&C in any way question or dispute the ownership thereof by Eleveo or Owner. You agree that Eleveo retains all intellectual property rights in the Software and to services provided. Your use of the Software is limited to the rights explicitly granted under these Terms & Conditions and the EULA, which is incorporated herein by reference.

2. In the event that new inventions, designs or processes evolve in performance or as a result of these T&C, you acknowledge that the same shall belong to Eleveo unless otherwise agreed in writing by Eleveo.
3. Subject to Article IV. hereof, Eleveo will indemnify you against damage which you incur arising out of a claim of infringement of any third party Intellectual Property Right arising as a result of the supply or use of the Software in accordance with these T&C (an “**IPR claim**”), provided that you have no right to an indemnity under this Article V. Section 3 for an IPR claim if it fails to comply with Article V. Section 4.
4. If you become aware of a matter which might give rise to an IPR claim:
 - a) You shall notify Eleveo immediately of the matter (stating in reasonable detail the nature of the matter and, if practicable, the amount claimed) and consult with Eleveo with respect to the matter; if the matter has become the subject of proceedings, you shall notify Eleveo immediately and within sufficient time to enable Eleveo to contest the proceedings before final judgement.
 - b) You shall provide to Eleveo and its advisors reasonable access to its premises, its personnel and to all relevant assets, documents, and records that it possesses or controls solely to the extent necessary for the purposes of investigating the IPR claim and enabling Eleveo to take action referred to in Article V. Section 4 (d).
 - c) Eleveo (at its cost) may take copies of the documents or records, and photograph the premises or assets specified in Article V. Section 4 (b) provided that Eleveo shall take all reasonable steps not to disclose your or (as appropriate) end user’s confidential information.
 - d) You shall:
 - i. take any action and institute any proceedings, and give any information and assistance Eleveo may reasonably request to: dispute, resist appeal, compromise, defend, remedy or mitigate the IPR claim; or enforce against a person (other than Eleveo) your or (as appropriate) end user’s rights in relation to the IPR claim; and
 - ii. in connection with proceedings related to the IPR claim (other than against Eleveo) use advisors chosen by Eleveo and, if Eleveo requests, allow Eleveo the exclusive conduct of the proceedings.

In each case Eleveo indemnifies you for all reasonable costs incurred as a result of a request by Eleveo.
 - e) You may not admit liability in respect of or settle the IPR claim without first obtaining Eleveo’s written consent.
5. Nothing in Article V. in any way restricts or limits your or Eleveo’s general obligation at law to mitigate a loss which it may incur as a result of a matter giving rise to any claim.
6. Eleveo has no liability to you or (as appropriate) end user in respect of any claim to the extent that it relates to the use of the Software in combination with programs or data not supplied by Eleveo (where the claim relates to use with such other programs or data and not to the use of the Software in its own right) or to the use of other than the latest unaltered release of the Software.
7. If the use of any part of the Software is, or in the reasonable opinion of Eleveo is likely to become, an infringement of the rights of another person, Eleveo shall at its option:

- a) Replace the relevant Software or any infringing part of it with a comparable non-infringing product or document (as applicable); or
 - b) Procure for you or end user (as applicable) the right to continue using the relevant Software (or any part of it); or
 - c) If neither of the options in Article V. Sections 7 (a) or (b) are reasonably available within 30 days of notification of the IPR claim to Eleveo, Eleveo or you may terminate these T&C, both by 30 day's prior notice to the other party without further obligation. In these circumstances, Eleveo is only liable to reimburse you the proportionate part of the sum actually received by Eleveo from you and Article V. Section 3 does not apply.
8. The remedies provided in Article V. Sections 3 and 7 are the sole remedies available to you in respect of any infringement of Intellectual Property Rights of another person by the Software or any part thereof. Other than as expressly granted under the terms of these T&C, you or end user (as applicable) shall have no rights whatsoever against Eleveo.

Article VI. Confidentiality

The Parties agree that all Confidential Information which either Party obtains under this Agreement and their mutual business relationship, is strictly confidential. Each Party agrees to use Confidential Information to the extent necessary for the performance of its tasks hereunder, not to make any records or copies thereof where this is not necessary for the performance hereof, and shall not disclose it to any third parties without a prior consent of the Party furnishing the information. Each Party shall be obliged to ensure that confidentiality of Confidential Information is also maintained by any of its employees and end users.

Article VII. Arbitration Clause

1. In the event that any dispute or difference arises between the Parties relating to or arising out of this Agreement, including its validity, implementation, execution, interpretation, rectification, termination, or cancellation, the Parties shall first attempt to resolve the matter through good-faith negotiations. Such negotiations shall commence promptly upon written notice of the dispute and conclude within 15 (fifteen) Business Days.
2. If the Parties are unable to resolve the dispute through negotiations, either Party may refer the matter to mediation before a mutually agreed mediator. Mediation shall occur within 30 (thirty) Business Days of the failure of negotiations, and costs of mediation shall be shared equally unless otherwise agreed. If mediation is unsuccessful or not agreed upon, the following article shall apply:
 - a) If the law of Tennessee applies, then all disputes (except small claims) arising out of or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Notwithstanding the foregoing, either Party may seek injunctive relief or other equitable remedies from the Courts of Tennessee in connection with claims related to intellectual property rights, confidentiality obligations, or enforcement of an arbitration award. For all matters not subject to arbitration, the Parties consent to the exclusive jurisdiction of the state and federal courts located in Tennessee. The Party that is unsuccessful in the dispute shall reimburse the prevailing Party for the reasonable costs of the proceedings, including attorneys' fees, as determined by the court. The decision or award of the Courts of Tennessee shall be final and binding on the Parties, with no further appeals except as allowed by applicable law.
 - b) When the law of the Czech Republic applies you hereby consent to have the disputes finally decided by the Arbitration Court attached to the Economic Chamber of the Czech Republic and

Agricultural Chamber of the Czech Republic by three arbitrators in accordance with the Rules of that Arbitration Court, whereas the Party that is unsuccessful in the dispute shall be obliged to reimburse the other Party for the costs of the proceedings. The award applicable to the party in such proceedings shall be final.

**Article VIII.
Final Provisions**

1. Force Majeure – No liability hereunder shall result to either you or Eleveo by reason of delay in performance caused by force majeure, that is circumstances beyond the reasonable control of the Eleveo or you, including, without limitation, acts of God, fire, flood, war, civil unrest, labor unrest, or shortage of or inability to obtain materials or equipment.
2. These T&C are governed by and shall be construed in accordance with substantive laws, i.e. without regard to its conflicts of laws principles, in force (a) in the State of Tennessee, if these T&C are concluded when you reside in the United States, Canada, Mexico or any state located in the Central or South America, or (b) in the Czech Republic, if these T&C concluded when you reside in any other jurisdiction not described above. Application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
3. The provisions of these T&C shall prevail over, and Eleveo specifically objects to, any additional or conflicting provisions in any purchase order, acceptance notice, or other document issued by you, which shall be void and of no effect.
4. Any processing of personal data is governed by Privacy Policy, unless stated otherwise.
5. These T&C are binding for the period during which you will be utilizing the purchased Software and/or Services. These T&C can be terminated only in accordance with these T&C, EULA or other mutually agreed upon contract terms between you and Eleveo. Unless expressly stated in these T&C, Eleveo does not provide any refunds for purchased Software and/or Services.