ANNEXE 1

SERVICE LEVEL AGREEMENT

1. Objet et portée du document

L'objectif du présent « Service Level Agreement » (ci-après « SLA ») est de définir les paramètres de référence pour la prestation du service FLATCHR International (ci-après « Service ») et le contrôle du niveau de qualité effectivement fourni. En outre, l'objectif du SLA est de définir les règles d'interaction entre FLATCHR et le client. Le présent SLA fait partie intégrante du contrat conclu entre FLATCHR et le client, dont les règles sont énoncées dans l'article 3 des Conditions générales de prestation de services. Le présent SLA s'applique séparément à chaque client et à chaque contrat.

2. Validité et durée de SLA - modifications ou remplacements du SLA

Le présent SLA entrera en vigueur pour une durée indéterminée pour chaque client et après la conclusion de chaque contrat. Il prendra fin avec la résiliation du contrat auquel il se rapporte. FLATCHR se réserve le droit de le modifier ou de le remplacer plusieurs fois au cours du contrat et à tout moment. Les modifications apportées au SLA ou le nouvel SLA (remplaçant le précédent) entreront toujours en vigueur pour une durée indéterminée, ou jusqu'à la prochaine modification ou le prochain remplacement, à compter de la date de leur publication sur la page www.FLATCHR.io dans la rubrique « conditions générales ». Toutefois, dans ce cas le client aura la possibilité de se retirer du contrat, conformément aux règles établies dans ce dernier, dans les trente jours suivant la date de publication de la modification et/ou du remplacement du SLA. En cas de retrait du client, les règles établies dans les Conditions générales de prestation de services s'appliquent.

3. SLA relatif au fonctionnement

3.1. Ressources de Data Center par l'intermédiaire duquel le Service est fourni.
Voir en annexe A le document « Clevercloud products & service ». En cas de changement d'hébergeur, le client sera prévenu sous 48h dès la mise en service du nouveau serveur.

3.2 FLATCHR fera tous les efforts raisonnables pour assurer la disponibilité maximale du Logiciel mis à disposition pour le client. Notamment sur les services suivants :

- multi-diffusion d'offres d'emploi,
- gestion des Candidatures,
- sourcing de CVs via réseaux sociaux et Cvthèques,
- gestion du « site carrière » ou de pages permettant aux candidats de laisser leurs informations.

·   Temps de réponse : min/avg/max/stddev = 20.896/21.190/21.484/0.294 ms
·   Temps chargement moyen de la page complète: 4s
.   Uptime moyen: 99,99%

4. Maintenance planifiée

La maintenance planifiée désigne les activités ordinaires et extraordinaires régulièrement réalisées par FLATCHR pour maintenir le SERVICE LEVEL AGREEMENT. Le temps de maintenance planifiée n'est pas comptabilisé dans le calcul du temps de disponibilité des différents services visés dans le présent contrat. FLATCHR fera ses meilleurs efforts pour prévenir le client de la réalisation d'une opération de maintenance de son fait, ou du fait de son hébergeur si celui-ci la prévient.

5. Détection des pannes et/ou défauts

5.1. Les pannes et/ou défauts des ressources mises à disposition via le logiciel FLATCHR, seront signalés par le client en envoyant un mail au support@FLATCHR.io. Toutefois, pour l'attribution des indemnités indiquées dans l'article 6 ci-après, seuls les dysfonctionnements également confirmés par le système de contrôle de FLATCHR seront pris en considération.

5.2. Les pannes ou défauts peuvent être signalés par le client au service d'assistance de FLATCHR de 9h à 18h hors weekend et jours fériés. Les signalements reçus seront immédiatement transmis au service d'assistance technique, en respectant strictement l'ordre chronologique de réception.

5.3. Le contrôle assuré par FLATCHR s'effectue à l'aide de logiciels spécifiques, qui détectent et signalent toute panne ou défaut en notifiant en temps réel le service d'assistance disponible 24 heures sur 24, 365 jours par an.

6. Indemnités

6.1. Aux fins du présent SLA, FLATCHR accorde au client à titre de dédommagement une indemnité correspondant à 5 % du total des dépenses générées (dans les trente jours précédant le dysfonctionnement ou au cours du mois précédant le mois concerné par le dysfonctionnement.

6.2. Pour bénéficier de l'indemnité, le client doit contacter le service d'assistance de FLATCHR en envoyant un mail à support@FLATCHR.io, dans les 10 jours suivant la fin du dysfonctionnement. Les montants des indemnités accordées par FLATCHR seront crédités sur le compte du client.

6.3. Nonobstant ce qui précède, il est en tous les cas entendu que pendant la période d'inactivité, le Service ne génère pas de frais.

6.4. Le client accepte que, en cas d'achat d'un Service mensuel (tel que, par exemple, « Augmentation du volume d'offre sur un mois »), il n'aura droit à aucun remboursement de la part de FLATCHR pour la période d'inactivité du Service.

7. Sauvegarde des données

FLATCHR s'engage à sauvegarder journalièrement l'ensemble des données nécessaires à la bonne fourniture des services au client. La sauvegarde de l'ensemble des données du système ou du client contribuant à la fourniture du service.

8. Limites d'applicabilité du SLA

Sont énumérés ci-dessous les cas dans lesquels, en dépit de l'apparition d'un dysfonctionnement, le client n'a droit à aucun des dédommagements prévus par le SLA :

- cas de force majeure, c'est-à-dire des événements qui, objectivement, empêcheraient le personnel de FLATCHR d'accomplir les tâches définies par le contrat comme étant la responsabilité de FLATCHR (notamment et sans s'y limiter : les grèves et manifestations bloquant les voies de communication ; les accidents de la circulation, les guerres et les actes de terrorisme, les catastrophes naturelles telles que les inondations, les tempêtes, les ouragans, etc.) ;

- interventions extraordinaires devant être effectuées d'urgence à la seule discrétion de FLATCHR, afin d'éviter tout danger pour la sécurité, la stabilité, la confidentialité et/ou l'intégrité du logiciel et des données et/ou renseignements contenus dans celui-ci. Le client sera averti de la mise en œuvre de ces mesures, dans un courrier électronique envoyé à l'adresse électronique indiquée lors de la commande, au moins 48 heures à l'avance, ou au début des opérations en question ou en tous les cas dès que possible ;

- indisponibilité ou blocage du logiciel en raison :
a) d'une utilisation incorrecte, d'une configuration incorrecte ou d'un arrêt, effectués volontairement ou involontairement par le client ;
b) d'un défaut ou d'un dysfonctionnement des logiciels d'application/de gestion fournis par des tiers ;
c) du non-respect ou de la violation du contrat par le client ;
- défaut ou dysfonctionnement du Service, ou leur non résolution ou tout retard dans leur résolution en raison d'un manquement ou d'une violation du contrat par le client ou d'un abus du Service par le client ;
- impossibilité pour le logiciel de se connecter au réseau public, que ce soit volontairement ou par la faute du client ;
- inaccessibilité totale ou partielle du logiciel, en raison d'un dysfonctionnement du réseau Internet indépendant de la volonté de FLATCHR (notamment et sans s'y limiter, pannes ou problèmes).

Synthèse des engagements

Engagements	Niveau de service
Disponibilité de l'application (plages horaires)	7 jours / 7 et 24h/24
Taux de disponibilité des services	20.896/21.190/21.484/0.294 ms

Uptime moyen	99,9%
Sécurité	100% conformité au RGPD
Sauvegarde des données	Journalière
Anomalie Bloquante	Traitement sous 4H
Anomalie Majeure	Traitement sous 12H

Définition : une anomalie est un dysfonctionnement lors de l'utilisation des services.

-Anomalie bloquante : incident empêchant l'utilisation de tout ou partie des fonctionnalités essentielles du système d'information de façon absolue ou dans des conditions telles qu'elles
seraient assimilables à un non-fonctionnement de celui-ci.
-Anomalie majeure : incident qui ne permet l'utilisation des fonctionnalités essentielles que de
manière insatisfaisante ; représentant une gêne importante ou provoquant des limitations ou restrictions dans l'utilisation d'une ou plusieurs fonctionnalités des services et notamment une
dégradation de ses ou leurs performances, mais permettant néanmoins un fonctionnement au moins
partiel des services.
-Anomalie mineure : incident empêchant l'utilisation des fonctionnalités des services non-essentielles
du système d'information, non classée bloquante ou majeure.

ANNEXE A

Terms of Use
Find legal information and resources for Clever Cloud products and services
Updated on the 27th of february, 2018

1. Preamble

1.1   CLEVER CLOUD has designed and developed a software application with standard and customizable options (the "Software") and online access, which allows its clients to entrust its entire information system infrastructure to CLEVER CLOUD. As an additional option, the CLIENT may ask CLEVER CLOUD to install on its Software all the CLIENT's applications (software package or specific applications), to manage its personal data silos and/or to insure the full management of its logs and of the application logs of its administrators or of its final clients.

1.2   The CLIENT wishes to be able to use the Software online and to benefit from the services offered by CLEVER CLOUD under the following terms.

1.3   In accordance with the obligation to negotiate in good faith (Art. 1104 [new] Civil Code), the CLIENT declares that, prior using the Software:

1/ the CLIENT has performed an accurate written analysis of its needs;

2/ CLEVER CLOUD has provided the CLIENT, in particular in the business and technical proposal,, the details of the explicit essential features of the service proposed by CLEVER CLOUD (Art. 1133 [new] Civil Code) enabling, in particular, the CLIENT to assess the adequacy of the Service for its needs;

3/ the CLIENT has received from CLEVER CLOUD all the information that is crucial for its consent, which have a direct and necessary relation with the content and the essential features of the Service or the capacities of CLEVER CLOUD (Art1112-1 [new] Civil Code).

1.4 CLEVER CLOUD reminds CLIENT that (i) CLEVER CLOUD's duty to inform does not relate to the assessment of the value of the SaaS Service (Art. 1112-1 [new] Civil Code) that CLEVER CLOUD agrees to supply to the CLIENT and (ii) any inaccurate economic assessment of the SaaS Service by the CLIENT, prior to using the Software, is not grounds for cancellation of the Terms of use (Art. 1136 [new] Civil Code).

1.5 CLEVER CLOUD draws the CLIENT's attention to the fact that the SaaS Service offered by CLEVER CLOUD is a standard service designed for companies of varying sizes operating in different business sectors. It is therefore up to the CLIENT, prior to using the Software (i) to verify that the SaaS Service meets its needs and (ii) to ensure that the SaaS Service is scaled in such a way that allows it to fulfill the CLIENT's own professional objectives, of which CLEVER CLOUD would not be aware. Consequently, in the event that the CLIENT has not (i) remitted to CLEVER CLOUD a preliminary written analysis of its needs or (ii) sent, in writing, to CLEVER CLOUD the details of the information that is crucial to its consent or (iii) informed CLEVER CLOUD, in writing, of all the essential features of the service expected from CLEVER CLOUD, the CLIENT acknowledges that CLEVER CLOUD Terms of Use will serve as expression of its needs, thus waiving any implicit essential feature of the provision of service by CLEVER CLOUD (Art. 1133 [new] Civil Code) of which CLEVER CLOUD may not be aware.

1.6 The parties declare that the pre-Collaboration negotiations were freely carried out (Art. 1112 [new] Civil Code) and that the provisions of the Collaboration were freely negotiated (Art. 1110 [new] Civil Code).
The parties have therefore agreed to the following terms.
This means you know how these terms work and you have understood what Clever Cloud can bring to you as an online service.

2. Definitions

2.1 Administrator
Refers to the User chosen by the CLIENT to centralize the communication between the CLIENT and CLEVER CLOUD and to manage the operational aspects of implementation of the SaaS Service by the CLIENT.

2.2 Bug
Refers to any SaaS Service malfunctions specifically related to a problem affecting the Software. A "Blocking" bug is one that completely prevents the use of the Software by the CLIENT. A "Major" bug is one that substantially degrades or restricts the performance and/or one or more major features of the Software.

2.3 Software
Refers to the Software on the Platform. The Software can only be accessed remotely, by connecting Users to the Platform. The Software includes the back office, which provides access to the Administrator to the configuration functions of the SaaS Service.

2.4 Maintenance
Refers to the Software's corrective maintenance service and assistance/user support service. The cost of this provision is included in the SaaS Royalty. The obligations of CLEVER CLOUD under this provision are specifically defined in the section "Maintenance / Assistance / Support."

2.5 Implementation
Refers to the preparatory phase for the Start of Production of the SaaS Service, which enables CLEVER CLOUD to prepare an instance of its Software specially for the CLIENT and to scale the SaaS Service to the extent desired by the CLIENT. The costs of Implementation are not included in the amount of the Royalty and are paid as a supplementary cost.

2.6 Collaboration
Refers to the first time the CLIENT starts using the Software until the last time he is using it, or until the Termination.

2.7 Platform
Refers to all the hardware and software of the hosting data center on which the Software is installed and from which the SaaS Service is provided to the CLIENT.

2.8 SaaS Royalty
Refers to the amount due by the CLIENT to CLEVER CLOUD in exchange (Art. 1107 [new] Civil Code) for the right to use the SaaS Service, except for additional services (Implementation phase, training, etc.). The deadline for payment of SaaS Royalty's invoices is 30 days.

2.9 SaaS Service
Refers to the right of the CLIENT (i) to access the Platform to use the Software, (ii) to benefit from the Software's hosting services and CLIENT's Data backup services on the Platform,

(iii) to benefit from the maintenance provisions described in the Section "Maintenance / Assistance / Support". Services included in the definition of SaaS Service form an indivisible whole for CLEVER CLOUD.

2.10 User(s)

The CLIENT determines the opening of rights and entitlements of each User under its sole responsibility via the Software's back office which is only accessible to the Administrator. It is the responsibility of the CLIENT to provide User training prior to the use of the SaaS Service in actual conditions of production.

This lists the general vocabulary used in these terms.

3. Purpose Of Terms Of Use – Features Of The Service

3.1 The purpose of Terms of use is to define the terms and conditions under which CLEVER CLOUD, through the use of the Software, provides the SaaS Service for the benefit of the CLIENT in return for payment of the Royalty. Use of the SaaS Service is granted to the CLIENT for the sole benefit of its Users, for the sole needs of its business, and not for processing data for the benefit of third parties, either free of charge or paid.

3.2 The list of services comprising the SaaS Service, the availability rate of the SaaS Service and the list of Software modules chosen by the CLIENT (i) together explicitly and exhaustively describe the essential features of the SaaS Service rendered by CLEVER CLOUD (Art. 1133 [new] Civil Code), excluding any implied features that the CLIENT may expect and which CLEVER CLOUD cannot legitimately be aware of, and (ii) together ensure that the SaaS Service rendered by CLEVER CLOUD is of a quality that complies with the legitimate expectations of the CLIENT and CLEVER CLOUD, taking into account the nature of the services that constitute, together and indivisibly, the SaaS Service rendered by CLEVER CLOUD and of the purposes and the amount of consideration the CLIENT agrees to pay to CLEVER CLOUD to use the SaaS Service (Art. 1166 [new] Civil Code).

3.3 At the request of the CLIENT, CLEVER CLOUD can perform additional services (advice, support, configuration, training, etc.), other than those explicitly included in the SaaS Service. Any additional services to be performed by CLEVER CLOUD must be the subject to a quotation from CLEVER CLOUD and a written and express acceptance from the CLIENT before being carried out by CLEVER CLOUD. These services are invoiced separately, in addition to the SaaS Royalty.

The service is for your use only, as a single customer or a company; and you're not going to give away your credentials to a third party. This also says that any additional services outside of our online documentation and public pricing provided on demand may be subject to additional fees.

4. Strict Limits For Use Of The Software And Saas Service

4.1 Terms of use include the right to use the Software, in a non-exclusive and non-transferable manner, and may not be sub-licensed, assigned, transferred or made available

to a third party, free of charge or paid, in any practical or legal manner whatsoever. The SaaS Service and the Software are intended to be used:
- only by remote access on the Platform chosen by CLEVER CLOUD, in compliance with the rules of identification and assignment of rights of the Users chosen by the CLIENT via the back office of the Software;
- only for the processing of the CLIENT's professional Data by the Users under the terms strictly defined in this Article.

4.2 Any modification or attempt by the CLIENT to modify the terms of access or use of the Software or the SaaS Service (access to the SaaS Service through any mean not authorized nor expected for by CLEVER CLOUD, unauthorized increase in the number of Users) or any use of the Software or SaaS Service under conditions not provided for in Terms of use without the prior written consent of CLEVER CLOUD represents a considerable danger to the continuity of CLEVER CLOUD's business whose intellectual property in the Software constitutes an essential asset. Consequently, any modification or attempt to modify the terms of use of the SaaS Service, the Software or the Platform, whether voluntary or not, by the CLIENT is deemed to constitute a sufficiently serious breach on the part of the CLIENT which entails the right of CLEVER CLOUD to suspend immediately and automatically the SaaS Service (Art. 1219 [new] Civil Code) upon the date of information to this effect by CLEVER CLOUD to the CLIENT, especially through an Email confirmed by a notification (Article 13.7 "Notification").

4.3 The login credentials of the CLIENT's Users to access the Software are personal and confidential. They are assigned by the Administrator of the CLIENT under its own responsibility. They may only be changed by the CLIENT or at the initiative of CLEVER CLOUD, provided that the CLIENT is informed immediately. The CLIENT agrees to take all necessary measures to keep the Users login IDs secret and not disclose them in any form whatsoever. The CLIENT is solely responsible for the use of the IDs which it alone manages through the back office of the Software. In general, the CLIENT assumes responsibility for the physical and logical security of the individual access terminals to the Software. In the event that the CLIENT becomes aware that an unauthorized person has gained access to the Software, the CLIENT agrees to inform CLEVER CLOUD immediately. In the event of loss, theft or usurpation of the Users login IDs, the CLIENT will use only the back office procedure of the Software, allowing him to recover his identifiers or create new ones.

4.4 By using the SaaS Service, the CLIENT must comply with, and refrain from violating, any right of any other person, entity, contractual duty and laws including laws forbidding distribution of child pornography, forgery, identity theft, interference with electronic communications, invasion of privacy, unlawful sending of commercial/marketing messages, collection of excessive user data from children, securities violations, wire fraud, money laundering, terrorist activities, false advertising, propagating or profiting from frauds and unfaire scheme.

4.5 The CLIENT agrees not to :
-Take action that might generate unreasonable or disproportionately (as determined by us) large load
        on our and on our third party providers' infrastructure
        -Abusive use of network bandwidth

-Interfere or attempt to interfere with the proper working of the SaaS service
-Run any form of "spam" on the SaaS Service
-Use the SaaS Service for any high risk activities including nuclear facilities, air traffic control, life customer systems or any other use where the failure of service could lead to death, personal injury or environmental damage (contact sales@clever-cloud.com for appropriate answers)

Our service is accessible through login and passwords (with optional 2FA) and cannot be transferred or sub-licensed. Also, using our service implies that you fully comply with the law and use the service in a ethical way.

5. Availability Of Saas Service

5.1 CLEVER CLOUD guarantees, within the context of a performance obligation, the SaaS Service availability rate of ninety-nine point nine (99,9) % per year. Compliance by CLEVER CLOUD with the availability rate is as a feature of the service of CLEVER CLOUD in accordance with the legitimate expectations of the parties (Art. 1166 [new] Civil Code) in consideration of the nature, uses and amount of the consideration CLIENT agrees to pay to CLEVER CLOUD to use the SaaS Service.

5.2 The SaaS Service availability rate is calculated "Platform start". By express agreement, the availability rate of the SaaS Service does not take into account (i) any interruptions in the operation of the Internet for which CLEVER CLOUD can in no way be responsible, or (ii) any scheduled maintenance operations of the Software or the Platform for which the CLIENT is informed by CLEVER CLOUD with at least ten (10) days notice.

5.3 The duration of the SaaS Service's unavailability due to the correction of the Blocking or Major Bugs in the Software or of the Platform according to the terms set forth in the "Maintenance/Assistance/Support" section is taken into account in the calculation of the rate of availability of the SaaS Service.

5.4 CLEVER CLOUD reminds the CLIENT (i) that the provision of a connection between the Platform and the CLIENT's computer system is not included in the services provided by CLEVER CLOUD in accordance with the SaaS Service and (ii) that it is up to the CLIENT to have a connection to a communication network in order to receive and transmit data from the Platform.

5.5 CLEVER CLOUD REMINDS THE CLIENT THAT THE INTERNET, WHICH ENABLES A CLEVER CLOUD TO PROVIDE THE SAAS SERVICE, IS AN OPEN AND INFORMAL NETWORK, CONSISTING OF THE INTERNATIONAL INTERCONNECTION OF INDEPENDENT COMPUTER NETWORKS USING THE TCP/IP PROTOCOL, WITHOUT ANY OBLIGATION TO SUPPLY OR CAPACITY TO SUPPLY BETWEEN OPERATORS OF THESE NETWORKS. CONSEQUENTLY, CLEVER CLOUD CANNOT GUARANTEE (i) ANY AVAILABILITY OF THE SERVICE WHICH TAKES ACCOUNT OF THE FUNCTIONING OF THE INTERNET, (ii) OR THAT THE USE OF THE SAAS SERVICE WILL BE UNINTERRUPTED.

The service is guaranteed to be available 99.9% of the year, on the condition that there is no Internet failure or any other global and/or catastrophical event which would be way out of our hands, (Heavy rain, giant meteor hitting earth, etc. You got the idea).

6.Penalty For Non-Compliance With The Availability Rate Of The Saas Service

6.1 Failure to comply for CLEVER CLOUD with the availability rate indicated in the Terms of use entails for CLEVER CLOUD the obligation to compensate the damages suffered by the CLIENT and to pay damages (Art. 1231-5 [new] Civil Code) in the form of a penalty.

The penalty is calculated according to the formula $P = M \times R$ where:

P = amount of penalty;

M = number of consecutive minutes of SaaS Service's unavailability;

R = amount of the 12-month SaaS Royalty reported in minutes (1 month being deemed to include 30 days and 1 year 360 days) multiplied (x) by two (2).

6.2 The penalty is payable only after formal notice to CLEVER CLOUD by the CLIENT, unless there is definite breach of CLEVER CLOUD (Art. 1231-5 [new] Civil Code) and subject to proof by the CLIENT of the unavailability of the SaaS Service for the alleged duration.

6.3 CLEVER CLOUD agrees to pay the amount of the penalty within thirty (30) days of receipt of the CLIENT'S invoice, without the CLIENT being able to compensate the amount of sums he owes to CLEVER CLOUD in respect of the SaaS Royalty with that of the penalty. The penalty is not subject to VAT (BOI-TVA-base-10-10-30-20140115 No. 70). Pursuant to Article 1231-5 [new] Civil Code, payment by CLEVER CLOUD of the penalty is exclusive of any other claim for damages to the CLIENT for the same prejudice and does not entitle the CLIENT to terminate the SaaS Service (except in the case of following section), the CLIENT's prejudice having been repaired by payment to the CLIENT of damages. The payment of the penalty by CLEVER CLOUD shall constitute recognition and acceptance by the parties of (i) the imperfect performance of the SaaS Service already rendered during the contested period (Art. 1223 [new] Civil Code) and (ii) the proportional reduction of the SaaS Service price over the period concerned.

6.4 In any case, the aggregate amount of penalties to be paid by CLEVER CLOUD over the last twelve (12) months of actual use of the SaaS Service by the CLIENT shall be limited to a maximum of ten (10)% of the total amount of the SaaS Royalty, excluding tax, actually paid by the CLIENT.

We will have to compensate our customers if we cannot maintain the 99.9% availability rate based on the calculation presented in this article.

7. Obligation To Collaborate

7.1 As soon as the CLIENT agreed to the Terms of use, each party agrees to execute the Term of uses in good faith, in particular by cooperating with the other party in the execution of the services it is responsible for, for example by communicating to the other party all documents, information and information necessary or requested to enable CLEVER CLOUD to provide the SaaS Service under the Terms of use.

7.2 The CLIENT acknowledges having been informed by CLEVER CLOUD that the implementation and the correct use of the SaaS Service is likely to depend on the CLIENT's ability to train its Users in advance in the use of the SaaS Service and to adapt some of its internal organizational and/or operational processes.

We truly hope that you've signed-up to Clever Cloud with a spirit of cooperation with us. We also assume that you know what you're doing when you are using Clever Cloud, and have sufficient technical abilities to run our developer-oriented service.

8. Financial Terms

8.1 General provisions
The amount and terms of payment are as described in our pricing page https://www.clever-cloud.com/pricing to which applicable taxes associated with the Software applies .In general terms, CLEVER CLOUD's invoices are payable, in advance, within thirty (30) days maximum from the date of invoice.

8.2 Late payment and suspension of execution

8.2.1 Compliance by the CLIENT with the deadlines for payment of the SaaS Royalty constitutes an explicit essential feature of the CLIENT's services expected by CLEVER CLOUD (Art. 1133 [new] Civil Code). Any late payment by the CLIENT of more than thirty (30) days after the agreed deadline and after reminder by email from CLEVER CLOUD to the CLIENT is deemed to constitute a sufficiently serious default on the part of the CLIENT (Art. 1219 [new] Civil Code) to entitle CLEVER CLOUD to immediately suspend the execution of the SaaS Service, with simultaneous notification of the CLIENT by CLEVER CLOUD, without further notice or formality of any kind.

8.2.2 In accordance with Article L.441-6 of the Commercial Code, in the event of non-payment of all or part of the SaaS Royalty (or any other amount owed by the CLIENT) within the deadlines, (i) any unpaid amount will automatically generate daily interest until the date of full payment of principal, interest, charges and related expenses, at a rate equal to FIVE (5) times the legal interest rate, without a reminder being necessary and without prejudice to the damages that CLEVER CLOUD reserves the right to pursue legally; (ii) in accordance with Article L.441-6 of the Commercial Code, a lump sum indemnity for collection costs, the amount of which is set in Article D.441-5 of the Commercial Code, will be automatically due for each invoice concerned. Pursuant to Article L.441-6 of the Commercial Code, the recovery costs, documented on the invoice, of amounts owed by the CLIENT (costs of proceedings, expenses, disbursements and attorney and bailiff fees) are deemed to constitute a related expense of the claim of CLEVER CLOUD and are entirely the responsibility of the CLIENT until the CLIENT's claim shall be repaid.

8.2.3 In the event of termination of the Terms of use by CLEVER CLOUD for non-payment by the CLIENT shall be immediately payable by way of provisional compensation for the prejudice suffered by CLEVER CLOUD, notwithstanding the right of CLEVER CLOUD to seek legal compensation for its total prejudice. For benefits calculated on the basis of a quantifiable result (for example, a number of clicks measured during a given period), the amount of the provisional compensation to CLEVER CLOUD will be calculated on the price

due by the CLIENT for the last full month of performance of the service concerned invoiced by CLEVER CLOUD. Failure by the CLIENT to pay the provisional indemnity within sixty (60) days of the notice of termination will constitute a manifestly illegal disturbance for CLEVER CLOUD.

8.3 Unpredictable economic circumstances

Pursuant to Article 1195 [new] Civil Code, CLEVER CLOUD declares to not accept (i) the risk of an upward fluctuation in the cost of hosting and storing the CLIENT Software and Data invoiced to it by a Platform that operates these benefits on an outsourcing basis with CLEVER CLOUD nor (ii) the risk of upwards fluctuation in the cost of the services related to the encryption of CLIENT Data or the CLIENT's connection to CLEVER CLOUD's platform. Consequently, any increase of more than fifteen (15)% of any of these specific services announced by CLEVER CLOUD to the CLIENT shall be deemed to constitute an unpredictable economic circumstance rendering the provision of the Service for CLEVER CLOUD excessively expensive.

8.4 Imperfect performance of services and reduction of price

8.4.1 In the event of imperfect performance of the services under the responsibility of CLEVER CLOUD (Art. 1223 [new] Civil Code) (i) that not sanctioned by penalties and (ii) for which the CLIENT has begun to pay, the CLIENT may, after formal notice from CLEVER CLOUD, request a proportional reduction of the price of the SaaS Royalty. In this case, the CLIENT and CLEVER CLOUD agree to negotiate in good faith a new price which, to be applicable, must be concluded within thirty (30) days of the CLIENT's notification. Failing agreement within this period, the Collaboration shall be terminated by notice at the initiative of either party.

8.4.2 If the CLIENT has not paid for the services which have been imperfectly executed (even for services actually invoiced but for which payment was not actually received by CLEVER CLOUD), upon receipt of the notice by the CLIENT and by express waiver of Article 1223 para. 2 [new] Civil Code, CLEVER CLOUD shall immediately inform the CLIENT of its decision to suspend the performance of the Service, said failure to pay being deemed to constitute a sufficiently serious breach by the CLIENT (Art. 1219 [new] Civil Code).

Our invoices are due 30 days in advance, penalty may be applied if the payment is more than 30 days late.

9. Liability And Insurance

9.1 CLEVER CLOUD reminds the CLIENT that the Software and the SaaS Service allow the CLIENT to improve the relevance or the efficiency of his company but do not constitute a service likely to affect the operation of the production of CLIENT products or services. CLEVER CLOUD is liable for direct, immediate (Art. 1231-4 [new] Civil Code) and foreseeable damages (Art. 1231-3 [new] Civil Code) caused by partial or total poor performance of the Terms of use that can be proven by the CLIENT. CLEVER CLOUD is in no way liable for indirect, unforeseeable or consequential damages caused by partial or total failure to perform the Service, including the cost of obtaining software or providing a substitute service to the Software or the SaaS Service.

9.2 In any event, the total amount of the financial liability of CLEVER CLOUD is limited to the amount of the SaaS Royalties paid by the CLIENT for the last twelve (12) months of actual use of the SaaS Service (Art. 1231-3 [new] Civil Code), except in the case of (i) bodily injury, (ii) gross or fraudulent misconduct of CLEVER CLOUD (Art. 1231-3 [new] Civil Code), (iii) infringement by CLEVER CLOUD of the intellectual property rights of a third party or (iv) non-compliance by CLEVER CLOUD with the criminal sanctions of the GRDP. The CLIENT shall be entitled to hold CLEVER CLOUD liable for only one (1) year from the occurrence of the breach in question.

9.3 CLEVER CLOUD declares that it has insurance with an insurance company with a reputation of creditworthiness, covering the consequences of its civil and professional liability which may be incurred by it as a result of the performance of the Terms of use. The payment of the annual insurance premium by CLEVER CLOUD takes into account the amount of the indemnity offered by CLEVER CLOUD under the Terms of use. In the event that the CLIENT desires an additional level of compensation for its losses, CLEVER CLOUD will offer the CLIENT an Amendment to his insurance policy and the CLIENT will bear the full amount of the surcharge requested by the insurance company of CLEVER CLOUD to cover the specific risk requested by the CLIENT.

We are not liable for indirect or unforeseeable damages that could be caused by failure to perform our service. As reasonable people, we have an insurance covering our civil and professional liability.

10. Opening

Any use of Clever Cloud services is subject to the opening of an account. Creation of the account is free. The customer completes the form and creates identifiers, in compliance this Terms of use. If you forget your identifiers, they are sent by e-mail to the address indicated by the client when registering after its specific application. The account is activated after sending an email to the email address specified by the customer during registration.

We need you to sign up to use our service. We're pretty sure that you've already done that before (we had to write it down, these are legal terms, you know…).

11. Termination

11.1 Method of suspension, cancellation or termination
Clever cloud reserves the right to suspend or delete an account that does not comply with Terms of uses.
The CLIENT has the right to terminate their account after sending a notice to the following address: sales@clever-cloud.com

11.2 Termination for sufficiently serious breach or non-compliance with a specific essential feature
The Collaboration shall terminate immediately and automatically if a party fails to remedy either (i) a sufficiently serious breach (Art. 1224 [new] Civil Code) of any of its obligations, or (ii) an explicit essential feature of the service (Art. 1133 [new] Civil Code) within thirty (30) days of notification by the other party of the obligation to terminate said breach.

11.3 Suspension of services

Clever Cloud reserves the right to suspend or delete an account without liability if (i) the credit card of third party you are using to pay the SaaS Service refuse to honor or reverse charges, (ii) you do not give us access to any information we could you to conduct a reasonable investigation of any suspected violation of the Terms of Use, (iii) your account is under an attack or being used by a third party without your agreement, (iv) we are forced by government agency or law to suspend your account according to misuse as described in section 4 , or (v) any event that could lead us to suspend your SaaS Service to protect our other customer or our hardware.

You will receive notice of the suspension which will take place immediately.

11.4 Reversibility and restitution of CLIENT's Data

At the latest within thirty (30) days of the effective date of termination of the Collaboration, whatever the cause, CLEVER CLOUD undertakes to return to the CLIENT all the CLIENT's Data which is processed by the SaaS Service, without retaining of any sort of copy and to not exercise any right of retention of such Data for any reason whatsoever. The Data is returned free of charge to the CLIENT in a standard market format (.xls, csv, etc.) which does not require the use of the Software to be re-used. No service other than the complete return to the CLIENT of its Data will be provided by CLEVER CLOUD as a form of reversibility, CLEVER CLOUD not being bound to ensure any continuity of the service rendered by the SaaS Service, this absence of continuity of service constituting (i) crucial information for the consent of CLEVER CLOUD (Art. 1112-1 [new] Civil Code) and (ii) an essential feature of the service (Art. 1133 [new] Civil Code) rendered by CLEVER CLOUD.

We can suspend your account if you do not comply with these Terms of use or if we cannot process your payment. But in case of suspension, we will return your data within 30 days.

12. Warranties Related To Software

12.1 CLEVER CLOUD warrants (i) that the Software is original and (ii) that it holds all intellectual property rights to the Software, subject to any Software modules having an "Open Source" license or (iii) that it has the right to grant a license to the CLIENT to any additional Software modules chosen by the CLIENT whose intellectual property rights are held by a third party who has granted the use to CLEVER CLOUD so that the latter can in turn validly grant the use to the CLIENT under the conditions set out in the Terms of use.

12.2 During the use of the Software, CLEVER CLOUD warrants the CLIENT against any legal action or proceedings on the ground that the Software may infringe the intellectual property rights of a third party. CLEVER CLOUD takes responsibility, at its own expense and choice, for the defense to be carried out as a result of the action taken against the CLIENT by a third party alleging an infringement of his rights, the owner of the intellectual property rights on each additional module having made a similar commitment with regard to CLEVER CLOUD. CLEVER CLOUD shall pay the full amount of damages to which the CLIENT shall be sentenced by a court decision having the force of res judicata in the main proceedings and becoming the final decision of the court. CLEVER CLOUD warrants to the CLIENT the peaceful enjoyment of the use of the Software and of any additional modules, provided that the CLIENT informs it without delay of any threat of action or procedure against peaceful enjoyment, allowing CLEVER CLOUD to provide the defense, and collaborates with

CLEVER CLOUD in this defense at the expense of CLEVER CLOUD. CLEVER CLOUD will have full control over civil defense, including appeal, negotiation and the right to reach a settlement within the meaning of Articles 2044 et seq, of the Civil Code. The CLIENT shall, at his own expense, provide its criminal defense, so as to reverse the presumption of bad faith imposed by the case law.

12.3 In the event of a civil conviction of CLEVER CLOUD by a court decision having the force of res judicata in the main proceedings and having become the final decision of the court or in the event of a transaction concluded by CLEVER CLOUD, CLEVER CLOUD may, at its option and at its own expense, either (i) obtain for the CLIENT the right to continue to use the Software (and/or any additional module) so that it no longer infringes on the rights of any third party, or (ii) if the right to continue using the Software (and/or any additional module) cannot be obtained or if the Software (and/or an add-on module) cannot be replaced or modified for a reasonable cost so that it no longer infringes on the rights of a third party, announce the end of the Collaboration and return to the CLIENT the total amount of the SaaS Royalties paid by the CLIENT to CLEVER CLOUD from the date of the claim of the third party (period after the last service provision not having received its consideration - Art. 1229 [new] Civil Code), notwithstanding the right of the CLIENT to seek legal compensation for his total damages.

We hold all Clever Cloud's intellectual property, and no third party intellectual property were used on the software.

13. Maintenance / Assistance / Support

13.1 Assistance / support in the use of the Software
CLEVER CLOUD provides assistance (support) relating to the use of the SaaS Service in French and English, by electronic mail for the benefit of the Users. The cost of this benefit is included in the SaaS Royalty.

13.2 Maintenance : correction of Software Bugs
13.2.1 CLEVER CLOUD provides the CLIENT, by remote maintenance, electronic mail, etc. the information necessary to enable it to attempt to resolve any Major or Blocking Bug as soon as it is reported (defined below). Once the Major or Blocker Bug has been identified and reproduced by CLEVER CLOUD, CLEVER CLOUD agrees to install as soon as possible on the Platform a correction to the instructions of the Software which are the cause of the Major or Blocking Bug. To accomplish this, CLEVER CLOUD may install a temporary workaround, an upgrade or a new version of the Software.

13.2.2 CLEVER CLOUD agrees to take into account the CLIENT's requests to intervene for Maintenance within the shortest possible time. Upon reception by CLEVER CLOUD of a written request to intervene by the CLIENT (the "Reporting" of a Bug), CLEVER CLOUD agrees to act as quickly as possible to reproduce the Major Bug or Blocking reported. From the time of reproduction of the Major or Blocker Bug by CLEVER CLOUD, the SaaS Service is deemed unavailable and the duration of this unavailability is taken into account in the calculation of the annual availability of the SaaS Service indicated in the section "Availability of the Service" and sanctioned by penalties calculated in the section "Penalty for failure to respect the availability rate of the SaaS Service."

13.2.3 By express agreement between the parties, the right to use the Software granted by CLEVER CLOUD to the CLIENT in respect of the SaaS Service constitutes a provision of a copy of the Software within the meaning of Articles 1709 et seq. of the Civil Code. In this regard, CLEVER CLOUD cannot guarantee that the Software will operate without error. The parties acknowledge that the technical state of the software does not allow CLEVER CLOUD to guarantee that CLEVER CLOUD will be able to correct all the anomalies, errors, bugs or latent defects likely to affect the Software. In accordance with Art. 1133 para. 3 [new] Civil Code, by agreeing with the Terms of use, the CLIENT expressly agrees to accept this risk, which is inherent in software development and operation, and therefore waives any errors relating to the quality of the Software or SaaS Service.

13.3 Updates and new versions
Updates and/or new versions of the Software are provided to the CLIENT, installed and put into production on the Platform by CLEVER CLOUD, without intervention by the CLIENT, at a frequency of which CLEVER CLOUD remains the sole judge. The terms of use, in particular the right to use the Software granted to the CLIENT, apply to any update or new version installed by CLEVER CLOUD on the Platform. CLEVER CLOUD reserves the right to change the functionality of the Software, without reducing the availability rate defined in the section "Availability of the Service".

13.4 Software Maintenance Limits
To benefit from the Maintenance, the CLIENT is required to:
    (i) promptly forward to CLEVER CLOUD a Report of any possible Bug and transmit without delay to CLEVER CLOUD any information necessary or useful in locating and reproducing the Bug;
    (ii) make itself fully available to CLEVER CLOUD and allow CLEVER CLOUD to contact any user who might provide it with any useful information about the Bug reported in order to reproduce it.

The cost of the support is included in the service billing, and we will always do our best to perform updates and maintenance of our software in a way that has the least impact on our customers.

14. General Terms

14.1 Confidentiality
14.1.1 The CLIENT's Data processed by the SaaS Service and, in general and not limited to, the parties' business plan and their present and future activities, their personnel, their know-how, whether this information is obtained directly or indirectly from the other party, its employees, subcontractors, agents or service CLEVER CLOUDs, shall be considered confidential. Confidential information is provided "as is" without warranty, express or implied, as to its accuracy or completeness. The following does not constitute confidential information:
1/ information available to the public without breach of the Terms of use by the party disclosing or using it;
2/ information validly held by one party before its use/disclosure by the other party;

3/ information validly obtained from a third party authorized to transfer or disclose such information without breach of an obligation of confidentiality or a secret confidentiality.

14.1.2 Each party undertakes (i) not to use confidential information, for any reason whatsoever, except in execution of the rights and obligations under the Terms of use, (ii) not to disclose confidential information to any person, by any means, except to those of their employees, service CLEVER CLOUDs or subcontractors for whom this information is necessary for the performance of the Collaboration.

14.1.3 For the protection of the other Party's confidential information, each Party undertakes to take the minimum protective measures it would take to protect its own confidential information and undertakes to ensure (i) that its employees, service CLEVER CLOUDs and subcontractors with access to confidential information have signed, prior to any disclosure for their benefit, a confidentiality agreement, the obligations of which are equivalent to those set out in this section and (ii) to justify by writing immediately on first request of the other party.

14.1.4 Each party recognizes that the one who uses or discloses without authorization any confidential information obtained by the other party during negotiations undertakes its responsibility under the conditions of general law (Art. 1112-2 [new] Civil Code).

14.2 Anti-corruption
14.2.1 CLEVER CLOUD undertakes to strictly comply with the French regulation prohibiting corruption of public or private agents, influence peddling, money laundering, likely to be subject in particular to a prohibition for bidding for a public tender, including the OCDE Convention of December 17, 1997 relating to combating corruption of foreign public agents into international commercial transactions.
CLEVER CLOUD undertakes to implement into its company all necessary policies and measures in order to warn and prevent corruption.

14.2.2 CLEVER CLOUD undertakes that, based on its knowledge, its directors, officers, employees or any person acting on behalf of the Collaboration, have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind from any natural person in any way, including a public official at the national level, a political party official or candidate to political office, and any person having a legislative, administrative or judiciary function on behalf of every country, public agency or company or public official of an international public organization, with the intention of corrupting them and/or to persuade them to act in an inappropriate manner regarding their functions or activities in order to obtain or retain for the CLIENT a commercial case or ensure it any advantage as part of its commercial cases.

14.2.3 CLEVER CLOUD undertakes to ensure that no person acting in behalf of CLEVER CLOUD and providing a service provision for and on behalf of the CLIENT was excluded or will not be excluded in the future, suspended or even prohibited to take part of a public contract by a governmental agency and/or bid on national or international projects.

14.2.4 CLEVER CLOUD undertakes to maintain, within an appropriate delay after the date of termination of the Collaboration, all receipts enabling to prove the compliance with the dispositions of the present clause.

14.2.5 CLEVER CLOUD undertakes to notify to the CLIENT, as soon as possible from every disclosure of facts likely to constitute a corruption action, every violation of the present clause.

14.2.6 If the CLIENT notifies to CLEVER CLOUD that there are reasonable reasons to believe that CLEVER CLOUD would have breached its obligation to combat the corruption:
- the CLIENT will be entitled to suspend immediately the performance of the Collaboration in order to investigate on the relevant breach;
- CLEVER CLOUD will take all reasonable measures in order to prevent the lost or destruction of the proofs regarding to the relevant breach.

14.2.7 In case of proven breach by CLEVER CLOUD of its obligation to combat the corruption:
-the CLIENT could immediately terminate the Collaboration of every damages resulting from the CLIENT of the breach by CLEVER CLOUD of its obligation to combat the corruption;
-CLEVER CLOUD will compensate the CLIENT.

14.3 Force majeure
14.3.1 Neither party shall be liable for failure to perform any of its obligations as a result of the occurrence of an event of force majeure, understood as an event (i) beyond the control of the party (ii) which could not reasonably be foreseen at the conclusion of the Collaboration, and (iii) the effects of which cannot be avoided by appropriate measures (Art. 1218 [new] Civil Code).

14.3.2 During the period of force majeure, if the impediment is temporary (less than thirty (30) days) the event of force majeure suspends the fulfillment of its obligations by the party invoking it unless the resulting delay justifies the termination of the Collaboration (except for the obligation to pay amounts due on the date of the occurrence of the force majeure event). If the impediment is final or more than thirty (30) days, the Collaboration shall be terminated and the parties discharged from their obligations, subject to the notification of such termination by either of the parties. In all cases, the party affected by force majeure must take the appropriate measures (Art. 1218 [new] Civil Code) in order to avoid, eliminate or reduce the causes of the delay and resume performance of its obligations as soon as the event invoked has disappeared.

14.4 Use of CLIENT name for reference
After 10 days of Collaboration the CLIENT expressly authorizes CLEVER CLOUD to use the CLIENT's name/logo/brands, strictly in accordance with the CLIENT's graphic charter, solely as commercial reference (CLEVER CLOUD's list of client references and public announcements on CLEVER CLOUD's professional social networks), to the exclusion of any other use which is subject to prior authorization by the CLIENT. Referencing the CLIENT on the public list of CLEVER CLOUD clients is for CLEVER CLOUD an explicit essential feature (Art. 1133 [new] Civil Code) of the expected benefit of the CLIENT.

14.5 Non-solicitation of personnel

Unless otherwise agreed by the parties to the contrary, each party waives the right to hire any of the employees of the other party who has participated in the performance of the Collaboration, even if the initial solicitation is made by the employee concerned. This obligation is valid throughout the start of the Collaboration, and for twelve (12) months after the termination or the effective date of termination, whatever the cause and/or the grounds. Should one of the parties fail to comply with this obligation, it agrees to compensate the other party (including selection and recruitment expenses, training costs, resulting damage to its personal reputation or commitments already taken into account) by immediately paying a lump sum compensation equal to twelve (12) times the last monthly gross salary that the employee concerned has received from the party in default.

14.6 Social obligations and concealed work

CLEVER CLOUD undertakes to comply with Articles L.8222-1 and D.8222-5 of the Labor Code (mandatory declarations to the social welfare bodies or the tax authorities) and attests on its honor to the execution of its services by employees who are legally employed under Articles L.1221-10, L.3243-2 and R.3243-1 of the Labor Code.

14.7 Notification

Each party shall elect domicile at its registered office. Any notice (notice, reporting, approval or consent) required or necessary pursuant to the Collaboration shall be in writing and shall be deemed validly given if (i) delivered personally to the addressee by signature of two (2) original copies (one (1) of which is for the recipient) or (ii) by registered letter with return receipt to the other party, or (iii) by express courier service against the signature of a receipt of delivery. Time limits are counted per calendar day, one week containing six (6) business days and five (5) working days. Any time counted from receipt of a notice shall run from the first attempt to deliver it to the recipient, as evidenced by the postmark, as well as the acknowledgement of the express mail service and the handwritten date on the hand-delivered letter. If a measure is to be taken or a notification must be made on a particular date or deadline and that date is not a business day, the measure in question may be postponed to the next business day.

14.8 Audit at the request of the client

The CLIENT may, if he so wishes, carry out an audit, not more than one (1) time per calendar year and at his own expense, directly or through any independent third-party contractor who is not a competitor of CLEVER CLOUD, in order to ensure the fulfillment of its obligations by CLEVER CLOUD. However CLEVER CLOUD reserve the right to refuse any Audit procedure.

All audit terms and procedures must be discuss and agreed by both the CLIENT and CLEVER CLOUD before any procedures start. For any audit demand please send an email to sales@clever-cloud.com

Here, you will learn more about what we do on serious things like confidentiality, anti-corruption, use of our customers' name, social obligation, etc.

15. Protection Of Client Personal Data

Under the Terms of Use, CLEVER CLOUD's commitments under the protection of CLIENT's Personal Data (the "Personal Data" under Regulation UE n°2016/679 of April 27, 2016 "GDPR") are described in this section whose terms prevail, with express agreement of the parties, on any other provision of the Terms of Use. As soon as they will be enacted by the European Commission or by the CNIL in accordance with GDPR, the parties undertake to regularize a new version of this section to comply with any obligation regarding to model clauses regulating every personal data outsourcing, including in the event of compliance by the CLIENT with a certification program.

15.1 Outsourcing of hosting's provisions

Name of the hosting provider Equinix
Identification No. of the hosting provider   429 840 853
Address of the registered office   114 Rue Ambroise Croizat, Saint Denis FR 93200
Payment conditions by CLEVER CLOUD of the hosting provider's invoices Thirty (30) days in advance

15.2 The CLIENT is solely responsible for processing the Personal Data
The CLIENT guarantees to be the sole owner or legitimate holder of the Personal Data which are processed by the SaaS Service offered as a standard to every client of CLEVER CLOUD. All rights of persons concerned (Articles 15 to 22: right of access, rectification, oblivion, opposition, etc.) must be exercised by such persons directly and exclusively with the CLIENT, CLEVER CLOUD agreeing to comply with any lawful written instruction from the CLIENT in this regard.

15.3 CLIENT's guarantees regarding Personal Data
15.3.1 In accordance with European and French legislation on the protection of personal data, in particular, Regulation 2016/679 of 27 April 2016 (together "GDPR"), prior to any use of the Software or SaaS Service by the CLIENT and for the Initial Term and those of any termination of the Collaboration, the CLIENT guarantees to CLEVER CLOUD :

1/ that it has collected and processed Personal Data in a lawful, fair and transparent manner for specific, explicit and legitimate purposes of which CLEVER CLOUD is in no way aware and that the CLIENT declares to have duly informed the persons concerned. Consequently, any obligation of prior declaration relating to the processing of its Personal Data with a supervisory authority is its sole responsibility, and the CLIENT guarantees to CLEVER CLOUD to have carried this out;
2/ that it is solely responsible for the processing of the Personal Data that it collects, enters or processes in connection with its use of the SaaS Service;
3/ that it alone determines the purposes and means for the processing of its Personal Data, including through the use of the SaaS Service. Consequently, it is the CLIENT's responsibility, prior to the use of the SaaS Service, to verify that the processing of Personal Data requested from CLEVER CLOUD is in accordance with the purpose and means of the processing of Personal Data of which CLEVER CLOUD is sub-contractor.

15.3.2 The guarantees given by the CLIENT to CLEVER CLOUD under this article constitute an explicit essential feature (Art. 1133 [new] Civil Code) of the service expected from the CLIENT by CLEVER CLOUD and thus CLEVER CLOUD cannot be held liable in this regard, on any grounds whatsoever. In the opposite case, the CLIENT agrees to absolve and guarantee CLEVER CLOUD, without restriction or reservation, of any consequence, in particular financial, imputed to CLEVER CLOUD.

15.4 CLEVER CLOUD is a sub-contractor for the processing of the CLIENT's Personal Data
15.4.1 CLEVER CLOUD acts as subcontractor for the processing of the CLIENT's Personal Data within the meaning of Art. 28 of GDPR (Art. 35 of Law No. 78-17 of January 6, 1978). Consequently, CLEVER CLOUD agrees (i) not to process the CLIENT's Personal Data otherwise than under the Terms of Use and (ii) not to proceed with any other processing of the CLIENT's Personal Data that is not provided for in the Terms of Use, except on written and legitimate instructions from the CLIENT.

15.4.2 CLEVER CLOUD reminds the CLIENT that, pursuant to Art. 28.3.h) para. 2 of GDPR, any instructions of the CLIENT by CLEVER CLOUD which could lead to non-compliance with the GRDP, requires CLEVER CLOUD to inform the CLIENT immediately. CLEVER CLOUD reserves the right to refuse instructions from the CLIENT which appear to it to be unlawful within the meaning of Article 82.2 of GDPR. In this case, a documented written refusal by CLEVER CLOUD in no way allows the CLIENT to terminate the Collaboration, unless the CLIENT accepts its liability vis à vis CLEVER CLOUD in case of termination of the Collaboration deemed to be "without lawful cause" and to lead the application of Article 11.3.3.

15.5 Conformity commitments of CLEVER CLOUD
15.5.1 No later than May 25, 2018, CLEVER CLOUD undertakes to the CLIENT to introduce sufficient guarantees regarding the implementation of technical and organizational appropriate measures so that the processing of CLIENT's Personal Data complies with GDPR's requirements and warrants the protection of the rights of persons concerned whose Personal Data are processed by the CLIENT through the SaaS Service (art. 28.1 GDPR).

15.5.2 CLEVER CLOUD agrees to technically process the CLIENT's Personal Data solely in order to render the SaaS Service, to the exclusion of any other use for the benefit of CLEVER CLOUD or third parties. In accordance with the GDPR, the CLIENT's Personal Data is stored and processed by CLEVER CLOUD on servers located exclusively within the territory of the European Union and are not subject to any transfer outside the EU, without prio written authorization by the CLIENT, except pursuant to a decision of the European Union (Argentina, Canada, Israel, New Zealand, Switzerland, Uruguay and "Privacy Shield") which allow a processing service CLEVER CLOUD to export personal data without specific authorization.

15.6 Register of operations of Personal Data's processing
In accordance with Art. 30.1 of GDPR and no later than May 25, 2018, CLEVER CLOUD agrees to maintain an up-to-date list of the CLIENT's Personal Data processing including:
        a) the name and contact details of the CLIENT and of the Data Protection Officer if one has been appointed by the CLIENT;
        b) the purposes of the processing;

c) a description of the categories of persons concerned and the categories of personal data;

d) the categories of recipients to whom Personal Data have been or will be sent, including recipients outside the EU;

e) where applicable, transfers of Personal Data to a country outside the EU, including its respective identification;

f) to the extent possible, the time limits for the deletion of the different categories of Personal Data;

g) to the extent possible, a general description of the technical and organizational security measures incorporating the provisions of the Collaboration.

15.7 Notification of security breaches

15.7.1 Pursuant to Art. 33 of GDPR and no later than May 25, 2018, CLEVER CLOUD undertakes to inform the CLIENT and without delay of any breach of the security of personal Data transmitted or processed through the SaaS Service where such infringement involves unauthorized access, disclosure, alteration, loss or destruction of this data, either accidentally or unlawfully. It is then up to the CLIENT alone to inform (i) the supervisory authority on which it depends, and (ii) the persons concerned when this breach of the security of the personal data "is likely to generate a high risk to rights and freedoms."

15.7.2 At first request of the CLIENT, CLEVER CLOUD will provide in writing all parts referred to Article 33 GDPR, namely:

(a) the nature of [personal] data violation including, if possible, groups and estimated number of persons concerned by the violation and groups and estimated number of data recordings of [personal] data concerned;

(b) the name and contact details of DPO or of another contact point to whom supplementary information can be obtained;

(c) the consequences likely to violate the [personal] data;

(d) the measures taken or the ones that CLEVER CLOUD suggests to take to resolve the [personal] data violation, including, where applicable, the measures to reduce the eventual negative consequences.

15.7.3 If, in the event that, it is not possible for CLEVER CLOUD to provide the CLIENT every information at the same time, CLEVER CLOUD undertakes to communicate this information to the CLIENT on a staggered basis without any further delay.

15.7.4 CLEVER CLOUD undertakes to document by writing any violation of [personal] data, by indicating the facts regarding the violation of [personal] data, its effects and measures taken by CLEVER CLOUD to resolve them. The documentation which is established will be available to the CLIENT and/or the CNIL or any other supervisory authority.

15.7.5 In the event that the CLIENT is classified as a supplier "to the public of electronic communications services on electronic communications networks open to the public" within the meaning of Article 34 bis of Law 78-17 of January 6, 1978, CLEVER CLOUD agrees to inform CLIENT immediately of any "breach of security resulting in accidental or unlawful destruction, loss, alteration, disclosure or unauthorized access" to the CLIENT's personal Data; it is the responsibility of the CLIENT to inform the CNIL and, where applicable, the

persons concerned. In the event of a security breach, CLEVER CLOUD agrees to (i) promptly take all appropriate technical corrective measures for the Software and/or SaaS Service to put an end to the identified security breach, in particular to render the Data incomprehensible to any person not authorized to have access, and apply them to the Data concerned by this security breach and (ii) to document it in writing as soon as possible for the CLIENT.

15.8 Commitment of CLEVER CLOUD in case of sub-sub-contracting
15.8.1 CLEVER CLOUD's obligations, especially Platform's services, may be performed in sub-contracting by a CLEVER CLOUD's contractor. In accordance with Article 28 GDPR and no later than May 25, 2018, generally, CLEVER CLOUD undertakes not to subcontract its own services to a sub-sub-contractor who would not comply with the GDPR and who will favour CLEVER CLOUDs having supported a code of practice (Article 40 GDPR) or being subject to a certification (Article 42 GDPR). If the CLEVER CLOUD's sub-contractor does not perform its obligations regarding the Personal Data protection, CLEVER CLOUD will remain fully liable to the CLIENT of any violation to GDPR's obligations by its sub-contractor.

15.8.2 In addition to define the object and the duration of the processing, the nature and the purpose of the processing, the type of personal data and the groups of persons concerned (Article 28.3 al.1 GDPR), each contract of sub-contracting concluded by CLEVER CLOUD will include at least a commitment of the sub-contractor:

(a) not to process personal data except by documented instructions of CLEVER CLOUD and/or CLIENT, including concerning data transfers to a country outside the EU (unless it is bound to proceed in this way pursuant to French law for CLEVER CLOUD; in that event, CLEVER CLOUD undertakes to inform the CLIENT of this legal obligation before the processing, unless French law prohibits such an information for important reasons of general interest);

(b) to make sure that persons authorized to process the personal data undertake to comply with the confidentiality or to submit to a legal obligation of confidentiality;

(c) to take every security measures requested by Article 32 GDPR;

(d) not to sub-sub-contract in its turn all or part of services to perform for CLEVER CLOUD and for the CLIENT to another CLEVER CLOUD without all commitments referred to this article are complied with the sub-contractor of the sub-contractor;

(e) to help the CLIENT, with appropriate technical and organizational measures, to the extent possible, to perform its obligation to pursue the needs whose the persons concerned decide to sue in order to exercise their rights;

(f) to help the CLIENT to guarantee the respect of obligations (i) of securization (Article 32 GDPR), (ii) of notification to the CNIL of eventual security breaches (Article 33 GDPR), (iii) of information to every person concerned by the security breach and by any eventual data leak (Article 34 GDPR), (iv) of prior realization of an impact study (Article 35 GDPR) and (v) of mandatory consultation to the CNIL in case of realization of an impact study, concerning that the nature of the processing and available information to the sub-sub-contractor;

(g) according to the CLIENT, to cancel every data or to return them after its service, and to destroy every existing copy, unless French law requires to the sub-contractor the preservation of the CLIENT's data;

(h) to make every necessary information available to the CLIENT to prove the compliance of obligations provided in this article and to ensure audits, including inspections, by the CLIENT (or an auditor) and to contribute to the audits.

15.9 Identification of the hosting Platform

15.9.1 In accordance with Law No. 75-1334 of December 31, 1975, by agreeing with these Terms of Use, the CLIENT expressly approves the service CLEVER CLOUD operating the Platform identified in the Terms of Use as a sub-contractor of the hosting services included in the SaaS Service.

15.9.2 Due to the large number of clients using its accessible standard SaaS Service via the Platform, it is not possible for CLEVER CLOUD to submit a change of Platform to the prior approval of the CLIENT. CLEVER CLOUD will be free to change Platform, subject to prior notification to the CLIENT, only if:

1.   the new Platform offers performance with regard to security and service level at least equal to that of the Platform identified in the Terms of Use;
2.   the new Platform is operated by CLEVER CLOUD without interruption of the SaaS Service rendered to the CLIENT;
3.   the Platform complies with all the obligations of CLEVER CLOUD under the GDPR;
4.   CLEVER CLOUD does not modify the amount of the SaaS Royalty.

15.10 CLIENT's Data encryption

In accordance with Law No. 2015-912 "Intelligence" of July 24, 2015 and for the case where CLEVER CLOUD would carried out encryption of all or part of the CLIENT's Data pursuant to the Terms of Use, CLEVER CLOUD reminds the CLIENT that, subject to criminal sanctions, "[providers] who provide encryption services enabling to ensure a confidentiality function should be required to deliver, within 72 hours, to officers [of intelligence services], at their request, all agreements enabling to decrypt transformed data by means of provisions rendered. The officers [of intelligence services] can request to providers [of encryption services] to implement themselves, within 72 hours, these agreements unless the provider of encryption services proves that he is not able to satisfy these demands."