

KLEVU GENERAL TERMS OF SERVICE

Effective as of Oct 15, 2018

This Software Subscription Service (SaaS) Agreement (the "Agreement") sets forth the obligations and conditions between you (the "Client") and Klevu Oy, a Finnish limited liability company ("Provider"), relating to the use of the Services defined herein. Please read this Agreement carefully. Client's use of the Services is expressly conditioned on the Client's acceptance of this Agreement.

BY SIGNING THIS AGREEMENT AND/OR BY USING THE SERVICES, CLIENT AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Recitals

1. Provider is the owner of certain proprietary computer software known as Klevu Search that is used to provide enriched and advance search on your online store (the "Software").
2. Provider provides and sells subscriptions for subscribers to access and use the Software either as a cloud-hosted or on-premise hosted software (the "Services").
3. Client desires to use the Services for Client's online store, including specifically use by Client's customers and/or potential customers ("Authorized Users") to search products within the search box of client's online store as per the terms and conditions set forth herein. Authorized Users may, for the purpose of this Agreement, mean either individual private person using the Services or legal entities (webshops) providing Services to their end-users. In the event the Client is providing this Service to other webshops, the Client warrants that it has a legal right to act on behalf of the web-shop(s).
4. Provider is willing to provide access to the Services for Client's online store pursuant to the terms and conditions set forth herein.
5. Provider and Client acknowledge and agree that this Agreement shall be effective and in force immediately upon the date that Client signs the agreement or takes the Service in use, whichever earlier (the "Effective Date")

NOW THEREFORE, in consideration for the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1. **Software Subscription.**

- a. Provider grants to Client and Client accepts from Provider, a limited, non-exclusive, non-transferable right to access and use and permit Authorized Users to access and use the Services solely for Client's online store. Client shall use

its best efforts to ensure that the Authorized Users use the Services in accordance with the terms and conditions of this Agreement. Client acknowledges that its right to use the Services will be web-based only pursuant to the terms of this Agreement and the Software will not be installed on any other servers or other computer equipment owned or controlled by Client or otherwise provided to Client.

- b. The use of the Services by Client or any Authorized User pursuant to this Agreement shall be subject to any end user agreement, terms of use, and/or privacy policy applicable to any other applicable website used to access the Services.

2. **Intellectual Property Rights.**

- a. Client acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the "Provider IP"), is, and at all times shall remain, the sole and exclusive property of Provider. The Provider IP contains trade secrets and proprietary information owned by Provider and is protected by Finnish laws (and other laws relating to intellectual property). Except the right to use the Services, as expressly provided herein, this Agreement does not grant to Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.
- b. Client shall not attempt, or directly or indirectly allow any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Software in any form or media or by any means.
- c. The provisions of this paragraph 2 shall survive termination of this Agreement.

3. **Subscription Fee.**

- a. Client shall pay to Provider the subscription fee (the "Subscription Fee") in the amount and for the duration that Client has entered to and agreed with the Provider.
- b. Any additional payment terms between Provider and Client shall be agreed to in writing and set forth in an invoice, billing agreement, or other written document.

4. **Accessibility/Performance.**

Provider's cloud servers will be used to cater the search to its Authorized Users. The Provider takes no responsibility for the Client's own network infrastructure, from where, the Klevu search will be provisioned. Provider shall use commercially reasonable efforts to make the Services available on a 24x7 basis (twenty-four hours per day, seven days per week) during the Term except for: (i) scheduled system back-up or other on-going maintenance as required and scheduled in advance by Provider, or (ii) for any unforeseen cause beyond Provider's reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any force majeure events set forth in this Agreement. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software and Service. Provider further reserves the right to monitor and reasonably restrict Client's ability to use the Services if Client is using excessive computing resources, which are impacting the performance of the Services for other subscribers. Provider agrees to notify Client in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or work-around solution.

5. **Maintenance and Support.** Provider shall maintain the Software and/or Services and provide all patches and fixes to the Software and/or Services at no additional cost at its end. However, the said maintenance shall not include any additional functionality, or custom programming, which the Provider, at its discretion, may provide at an additional cost as otherwise agreed between the parties. In case of a dedicated hosted solution, where the Software and/or Services are hosted at the Client's end, Client will be responsible for maintaining the hardware and is also expected to provide exclusive, continuous access to Provider to provision the services. If Client makes any changes in the allocated dedicated server(s) to the Provider, in case of reinstallation of services requiring at Client end, such changes and support will be considered as a paid service.

Client is responsible for updating and installing maintenance updates to its environment. Provider shall not cover any expenses related to Client's maintenance updates.

Client is responsible to maintain server at its end and provide exclusive, continuous access to Provider to provision the services. If Client make changes in allocating dedicated server to Provider, in case of reinstallation of services requiring at Client end, such changes and support will be considered as a paid service.

Provider does not provide any customization work for the Client, unless separately agreed.

If separately agreed by the parties, Provider may help in installation and maintenance of the Client environment. However, the Client must provide Provider a staging environment, i.e., an identical system to their live environment, and access to it, in which Provider can provide support for the Client.

Provider may support go-live situations, if separately agreed by the parties in advance.

6. **Term.** The Term of this Agreement is expected to commence on the Effective Date and shall be valid as per agreement between the Client and the Provider. Unless otherwise agreed, the subscriptions shall renew automatically for subsequent subscription periods, until terminated by either party subject to 2 days' notice prior the end of subscription period. The length of the subscription period (either 1 month, 3 months, 6 months or 12 months) shall be agreed by the Client and the Provider.

7. **Default.** Client shall be in default of this Agreement if Client fails to make any payment when due and fails to cure said default within five (5) days after receipt of written notice thereof from Provider. In addition to the monetary breach described in the previous sentence, either party will be in default of this Agreement if the party is in material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice thereof from the non-breaching party. If a party is in default, the non-breaching party may terminate this Agreement or seek any other remedies available at law or in equity, except as otherwise provided in this Agreement. In the event Client breaches or attempts to breach any of the provisions of this Agreement, Provider shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempt to breach, Client hereby acknowledging the inadequacy of any remedy at law.

8. **Confidentiality and Data Protection.**

- a. In addition to, and in no way limiting the requirements relating to the Provider IP as set forth in Section 2 of this Agreement, both parties shall use its reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) to protect all proprietary, confidential, and/or non-public information pertaining to or in any way connected to the Software, the Services, either party's financial, professional and/or other business affairs, and this Agreement (the "Confidential Information").
- b. Client shall not disclose or publicize the Confidential Information without the Provider's prior written consent.
- c. Both parties shall use their reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) not to disclose and not to use the Confidential Information for their own benefit or

for the benefit of any other person, third-party, firm or corporation in a manner inconsistent with the purpose of this Agreement.

- d. The terms of confidentiality and non-disclosure contained herein shall expire two (2) years from the date of the termination of this Agreement.
- e. The restrictions on disclosure shall not apply to information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through fault of the Client or Provider; (ii) already known to the Client or Provider prior to disclosure pursuant to this Agreement; (iii) obtained at any time lawfully from a third-party under circumstances permitting its use or disclosure to others; or (iv) required by law or court order to be disclosed.
- f. Notwithstanding the foregoing, Provider may use Client's name and logo in Provider's marketing material in accordance with good marketing practices. In addition, the Provider may use any aggregated anonymous data or search specific activity related information to improve the Service.
- g. Both parties agree to comply with the privacy and data protection regulation defined in <https://www.klevvu.com/gdpr/>

9. Limited Warranty. Provider warrants that it has the power and authority to grant the subscription for the Services granted to Client hereunder. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND PROVIDER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Remedy and Liability. Client represents that it accepts sole and complete responsibility for: (a) the selection of the Services to achieve Client's intended results; (b) use of the Services; (c) the results obtained from Services; and (d) the terms of any contracts between Client and Authorized Users. Provider does not warrant that the Client's use of the Services will be uninterrupted or error-free. Client shall not assert any claims against Provider based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and Client shall defend Provider from any demand or claim, and indemnify and hold Provider harmless from any and all losses, costs, expenses, or damages, including reasonable attorneys' fees, directly or indirectly resulting from Client's use of the Services, an Authorized User's use of the Services, and/or any agreement between the Client and an Authorized User based on or in any way related to the Services. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF

BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except for Provider's breach of Section 8 (Confidentiality), under no circumstances shall Provider be liable for any loss, costs, expenses, or damages to Client in an amount exceeding the Subscription Fee actually paid to Provider by Client for the previous twelve (12) months.

a. **Indemnification by Provider.** Provider will defend Client against any claim, demand, suit or proceeding made or brought against Client by a third party alleging that the use of the Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against client"), and will indemnify Client from any damages, attorney fees and costs finally awarded against Client by a court of competent jurisdiction as a result of, or for amounts paid by Client under a court-approved settlement of, a Claim Against client, provided Client (a) promptly give Us written notice of the Claim, (b) give Provider sole control of the defense and settlement of the Claim Against client (except that Provider may not settle any Claim Against client unless it unconditionally releases Client of all liability), and (c) give Provider all reasonable assistance, at Provider expense. If Provider receives information about an infringement or misappropriation claim related to a Service, Provider may in own discretion and at no cost to Client (i) modify the Service so that it no longer infringes or misappropriates, without breaching Provider warranties, (ii) obtain a license for Client's continued use of that Service in accordance with this Agreement, or (iii) terminate Client subscriptions for that Service upon 45 days' written notice and refund Client any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against client arises from content, an application not related to or powered by us or Client's or Authorized Customer's breach of this Agreement.

b. **Indemnification by Client.** Client will defend Provider against any claim, demand, suit or proceeding made or brought against Provider by a third party alleging that Client data, or Client's or Authorized Customer's use of any Service or content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against provider"), and will indemnify Provider from any damages, attorney fees and costs finally awarded against provider as a result of, or for any amounts paid by Provider under a court-approved settlement of, a Claim Against provider, provided Provider (a) promptly give Client written notice of the Claim Against provider, (b) give Client sole control of the defense and settlement of the Claim

Against provider (except that Client may not settle any Claim Against provider unless it unconditionally releases Provider of all liability), and (c) give Client all reasonable assistance, at Client expense.

10. **Miscellaneous.**

a. **Notice and Demands.** Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by email to the address the Client has given to the Provider when subscribing the Services.

b. **Governing Law; Forum Selection.** This Agreement shall be governed exclusively by the laws of the Finland without regard to its conflicts of laws principles. Any action under or concerning this Agreement shall be brought exclusively in the District Court of Helsinki, Finland. The parties irrevocably agree and consent that said forum is convenient and has jurisdiction to hear and decide any such action.

c. **Compliance with Laws.** Client shall use the Services in accordance with any and all applicable local, state, and federal laws.

d. **Headings.** The paragraph headings in this Agreement are for convenience only and they form no part of the Agreement and shall not affect the interpretation thereof.

e. **Severability.** If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

f. **No Waiver.** The delay or failure of either party to exercise any right under this Agreement or to take action against the other party in the event of any breach of this Agreement shall constitute a waiver of such right, or any other right, or of such breach, or any future breaches, under this Agreement.

g. **Assignment.** Client shall not assign or transfer this Agreement.

h. **No Partnership or Agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.

i. **Force Majeure.** Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the Provider's reasonable control, including but not limited to fire, flood, storm, act of God, war, malicious damage, failure of a utility service or transport or telecommunications network.

j. **Complete Agreement.** This Agreement and any schedules (including but not limited to GDPR terms) to it constitutes the entire agreement between the parties with respect to the Services,

and supersedes any and all prior or contemporaneous understandings or agreements whether written or oral. The Provider has a right to modify these terms at any time. The Provider shall communicate the changes by posting new changes to its web site and within its Service. The changes will be effective as stated in the beginning of the Agreement.

BY SIGNING THE AGREEMENT AND/OR BY USING THE SERVICE AND/OR SOFTWARE, CLIENT ACKNOWLEDGES THAT CLIENT HAS READ THESE GENERAL TERMS, UNDERSTOOD THEM, AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. CLIENT FURTHER AGREES THAT THE AGREEMENT AND THESE TERMS SHALL BE SUPERIOR TO, AND SUPERCEDE ANY CONFLICTING OR INCONSISTENT TERMS CONTAINED IN ANY PURCHASE ORDERS, OTHER DOCUMENTS PROVIDED TO THE PROVIDER BY CLIENT, OTHER DOCUMENTS PROVIDED TO CLIENT BY THE PROVIDER, OR AGREEMENTS PREVIOUSLY ENTERED INTO BY THE PARTIES.