

# CLEENG MASTER SERVICE AGREEMENT (CMSA)

All Services provided by Cleeng B.V. ("we" or "us") to Customers ("you") are governed by the Cleeng Master Service Agreement. The Agreement between you and us is comprised of an Order Form containing the Services ordered, the fees applicable and the details of the Customer and this Cleeng Master Service Agreement and Statement of Works ("SOWs"). If the Services include the Merchant Module Services the terms in the Merchant Schedule apply in addition to the terms of the Agreement.

We understand if you have any questions regarding the Agreement or about the way we operate. Please do not hesitate to contact us if should you have any questions. We are happy to answer them.

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## 1. Definitions

In this Agreement, the following terms written with a capital letter shall have the meaning as set out below:

**Agreement**, an Order Form and this Cleeng Master Service Agreement, including the schedules thereto and SOWs;

**Authenticated Users**: a User who is registered to the Customer's service(s), and who has logged into the service at least once in the calendar month;

**Cleeng Application**, online environment and API made available to you by us in which you can provide instructions and information, manage settings and review reports in your visual dashboard;

**Customer Content**, any and all content distributed by you or on your behalf;

**Merchant Schedule**, schedule containing additional terms applicable to the Merchant module;

**Minimum Commitment**, minimum number of Managed User on which basis fees are calculated;

**Module**: a product & service package provided by Cleeng to its Customers;

**Order Form**, the (electronic -) document executed between you and us to order specific Services;

**Personal Data**, personal data as defined in article 4 of the General Data Protection Regulation (EU/2016/679);

**Purchased Services**, means Services that you purchase under an Order Form, as distinguished from free services or those provided pursuant to a free trial;

**SLA**, Service Level Agreement in which key performance indicators for specific Services are agreed upon;

**SOW**, a statement of work for the provision of ad-hoc Services described in more detail in the SOW;

**Managed Users**, a VOD subscriber or a pay-per-view buyer, or any other User, who has a valid entitlement access to the Customer Content offers in a given month, regardless of the offer type (live/svod), payment gateway (Cleeng Merchant, or external), or discount (excluding Authenticated Users and free trials without payment obligations attached);

**Services**, all products and services provided by us;

**Term**, the agreed period during which the Services are delivered and the Agreement is in effect; and

**User**, anyone accessing the Cleeng Application.

**Average Contact Rate**, the amount of inquiries received per month divided by the average number of Managed Users during that month

## 2. Services

- a. We strive to provide Services to the best of our ability and to offer state of the art Services. We shall at all times provide Services with commercially reasonable

- efforts. We will respect and protect your privacy, data and personal information. Like us, you run your own business, service your customers, protect your customers' data, report and pay taxes, and observe all laws, rules, and regulations.
- b. In order for the Services to function as intended we are dependent on your good faith cooperation and the provision of all information that is reasonably required in order for us to deliver the Services. You warrant that all information provided is correct and up to date and that you shall promptly update provided information or provide additional information if so reasonably required for our provision of the Services.
  - c. We may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Term of the Agreement, including to reflect changes in technology, industry practices, patterns of system use, and availability of third party content and software. Changes to the Services will not result in a material reduction in the level of performance, security or availability of Services provided to you for the then current Term of the Agreement.
  - d. You order Services by means of the execution of an Order Form or SOW. Services are subject to and governed by the Agreement. In case of discrepancies between an Order Form/SOW and the Cleeng Master Service Agreement, the contents of the Order Form/SOW prevail. All Orders Forms and SOWs are subject to our confirmation.
  - e. For the Term, you are entitled to make non-exclusive and royalty-free use of whitepapers, brochures, trials and demo environments as made available to you by Cleeng from time to time.

### **3. Cleeng Application**

- a. In order to benefit from the Services, we shall provide you with access to the Cleeng Application and one or more Module(s). In this respect you shall be furnished with a username and password required to access the Cleeng Application.
- b. You agree to safeguard the confidentiality of the usernames and passwords required for access to the Cleeng Application. Services will be performed based on the settings in the Cleeng Application and you are responsible for all information you provide to us via the Cleeng Application.
- c. You (or Third Parties you contract with) may build your own interfaces using our APIs. You can also use the interface provided by Cleeng.

### **4. Pricing and Invoicing**

- a. Fees due for Purchased Services are set out in the Order Form or, as applicable, as available via at <https://cleeng.com/pricing> . Fees may be based on a Minimum Commitment. The Fees may vary if (i) the number of Managed Users changes (ii) you exceed an agreed upon threshold for Managed Users, (iii) you add additional Services, (iv) we agree on a fee change.
- b. Reports regarding purchases of Customer Content by Managed Users are available via the Cleeng Application.
- c. If a fee change is applicable during the course of a billing period your fees will be adjusted at the beginning of the next billing period up to the tier price that corresponds with the number of Managed Users. This process will continue for each Billing Period. Based on the records available in our platform, we automatically determine the number of Managed Users. You can increase at any

time your commitment of Managed Users. Note, you may only reduce the amount of Managed Users yearly, at the anniversary of the agreement.

- d. The applicable fees and commercial terms are exclusive of taxes and levies and are listed in the Order Form: Cleeng Rate Card. Note, the "\$" sign means USD in all our documents, except if explicitly stated otherwise.
- e. You may receive invoices Monthly, Quarterly and/or Yearly. Invoices can only be emitted in USD or EUR, or GBP. All amounts payable to us are to be paid on the due date indicated on the invoice or if no due date is indicated, within 30 days of the date of the invoice. If some invoice(s) are outstanding for more than 30 days, we are entitled to deduct the amounts payable to us from amounts that we owe you.
- f. All amounts payable to us shall be paid without suspension, set off and free and clear of, and without deduction of, any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation value added tax and withholding tax. If you are at any time required by any applicable law to make any such deduction from any payment due to us under this Agreement, then the amount due to us in respect of such payment shall be increased by such amount as will result, notwithstanding the making of such deduction, in our receipt on the due date for payment of each amount, of a net sum equal to the amount that we would have received if you had not been required to make such deduction.
- g. We are entitled to annually adjust fees for Services on the basis of relevant price indexes of economies (such as inflation rates) which affect our business and other costs relevant to the industry sector in which we operate. We shall notify you of such a change two (2) months in advance. In the event you do not agree to the amended fees you must notify us within one (1) month after a notification has been issued. In such event, we shall continue to provide the Services for the un-amended fees and, except if agreed otherwise, the Agreement shall terminate upon expiry of the then current Term.
- h. Users purchases' management is comprised of authentication and entitlement. Before Customer Content is released to an individual Managed Users we shall validate whether or not the Managed Users is a person authorized to access Customer Content and we shall validate whether or not the Subscriber is entitled to access the requested Customer Content.
- i. Discounted fees are valid for the initial Term only. Upon renewal of the Agreement, our standard non-discounted fees shall apply.

## **5. Right to access and use our application**

- a. For the Term and purpose of the Agreement we grant you, subject to timely payment of all fees, the non-exclusive, non-transferable and non-sublicensable right to access and use the Cleeng Application and other software provided by us in the context of the Services.
- b. You or your licensors retain all ownership and intellectual property rights in and to Customer content. We or our licensors retain all ownership and intellectual property rights to the applications, software and other works provided in the context of the Services and to anything developed or delivered by or on behalf of us pursuant to the Agreement.
- c. You are the sole responsible for any change to the Customer Content conditions, including, price, content availability or membership benefits.

- d. You agree to indemnify and hold us harmless against any and all third party claims, actions, liability, demands, damages and/or loss of any nature whatsoever together with all costs, expenses and/or other liabilities incurred in connection with any use of the Services and/or any part thereof in breach of the provisions of the Agreement, contrary to any applicable law, rule, regulation and/or order, and/or in a manner which infringes the rights of a third party.
- e. In the context of the Services provided and on our website for reference purposes, we may use and/or make public your logo, trademarks, trade names and other information provided by you. You may withdraw such consent at any time at your own discretion.

## 6. Customer Support

- a. As part of your Subscription, you are entitled to receive our standard professional Customer support. Email and chat support are included in your fees. Email and Chat support can be accessed through the Cleeng Application, or by emailing [support@publisher-cleeng.zendesk.com](mailto:support@publisher-cleeng.zendesk.com).
- b. By default, we commit to use all commercially reasonable efforts to achieve a 24-hour response time between the business hours. Also, Chat Support may be available from within the Cleeng Application, and is staffed between the business hours of 8 AM and 6 PM CET (messages can also be left after hours, and will be responded to the following business day).
- c. At any time, you may elect for a higher Customer support package. Contact our team for further information.
- d. If you require support on the migration of data into or from the Cleeng Application, such support requires the execution of a separate Order Form on which arrangements on data sources, data quality, timing and costs are agreed upon. Contact our team for further information.

## 7. Service Level Agreement

- a. We commit to use all commercially reasonable efforts to achieve an average minimum uptime of 99.8% (measured on a quarterly basis) of the Cleeng Application, excluding from the uptime calculation any downtime caused by acts or omissions of Customers, third parties, changes implemented on specific Customer request, general internet failures, or force majeure. You must immediately notify us of any downtime of the Cleeng Application which it experiences and to provide all reasonably requested co-operation in investigating and resolving any such downtime. We report on availability, scheduled maintenance and general incidents via [Cleeng Status](#).
- b. We use all commercially reasonable efforts to avoid having to take the Cleeng Application offline for executing planned maintenance. Should under circumstances such maintenance nevertheless prove necessary, we will provide as much notice as practically possible and plan such maintenance in a manner and on a date and time to minimize the impact taking all our Customers into consideration. Should under emergency situations (e.g. in case of force majeure event, internet failure or terrorist attack) unplanned maintenance be necessary to the Cleeng Application necessitating it to be taken offline, we will use all available resources to keep the required downtime to the absolute minimum.
- c. As a cloud based platform, we continuously improve our Service and the Cleeng Application. Planned maintenance to the Cleeng Application will happen in the

standard weekly maintenance window on Wednesday 07:00 – 07:15 hours CET, or at other times as determined by us and communicated to you.

- d. In respect of the optional Hi5 Module (customer care), we agreed with you on a specific SLA for this Service. The SLA depends on the average contact rate, defined as the amount of inquiries received per month divided by the average number of Managed Users during that month. Presently, the typical average contact rate is less than 2% for SVOD services, and less than 3% for Pay-Per-View services. If at any time during the Term, the actual average contact rate for the relevant service is more than 2 (two) times the typical average contact rate applicable at that time, calculated per rolling 12-hour period on a prorated basis, the broadcaster shall:
  - i. without delay and in any event within 2 weeks, take adequate measures to mitigate the excessive contacts, and,
  - ii. if the level of such actual average contact rate is not back to the level of the typical average contact rate, or lower, within 2 weeks, you shall pay the associated overage fees, being 0.50USD per contact.

## 8. Warranties

- a. We warrant that we will perform Services in material aspects as described in the Agreement and in a professional manner. However, like any other technology product and service provider we cannot warrant that, despite all of our efforts, the Cleeng Application and the Services will be provided for error-free, uninterrupted or that it is able to correct all errors. We will use commercial reasonable efforts to minimize the consequences of any errors and interruptions.
- b. You recognize that the internet technical infrastructure is highly fragmented and may lead to unpredictable interruption(s) of the Cleeng Application and the Services, beyond anyone's control. For example, we do not control the transfer of data and content over the internet and as such the Cleeng Application and the Services may be subject to limitations, errors, delays and other issues inherent in the use of communication facilities such as the internet.
- c. To the extent not prohibited by mandatory law, the warranties in the Agreement are exclusive and there are no other express or implied warranties or conditions regarding merchantability, quality or fitness for a particular purpose.

## 9. Security

- a. We understand that the security of Customer Content is an important aspect of your business. A breach of security exists if a significant public (not being Users) can access Customer Content. We will take action in order to help you remedy a breach of security as provided in this section.
- b. In order to enable us to effectively respond to a breach of security, you shall promptly notify us via [support@publisher-cleeng.zendesk.com](mailto:support@publisher-cleeng.zendesk.com) and/or via the Cleeng Application and at all times within 72 hours should you become aware of

the occurrence of any (suspected) breach of security, and provide as much details as possible about the nature of the breach.

- c. On receipt of a notification, we shall use commercially reasonable endeavors to determine if the breach of security is caused by or facilitated by a User. Should this be the case, we will cut off the access to Customer Content for that particular User. You understand that any breach of security resulting from any act or default by you shall only be remedied at your expense and that we have no obligation for a breach of security other than as stated in this section.

## 10. Privacy & Data

- a. We will (on your behalf) receive or otherwise have access to information or data that constitutes Personal Data. We shall process Personal Data in accordance with the data processing agreement available via [\[link\]](#).
- b. We may:
  - i. Compile statistical and other information related to the performance, operation and use of the Services;
  - ii. Use data in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes.
- c. Apart from the exceptions referred under clause 11 subsection c below, we will not transmit Data outside the EEA without your prior written consent except to jurisdictions otherwise in compliance with applicable EU data protection legislation.
- d. Cleeng shall use commercial reasonable efforts to ensure that data and information contained in the Cleeng Application are current and up to date. You nevertheless bear the final responsibility to assess the accuracy data and information contained in the Cleeng Application. You are responsible for your own tax reporting positions, and for conducting your own due diligence in respect of any taxes due by you.

## 11. Third Party Suppliers

- a. You will - if necessary - enter into agreements with other suppliers or providers of materials, hardware, third party software and other platforms Services deemed necessary for the operation of the Cleeng Application Services. We exclude liability for any goods or applications Services supplied by third party suppliers.
- b. Any third party content made accessible by us is provided on an "as-is" and "as-available" basis without any warranty of any kind.
- c. You acknowledge that:
  - i. the nature, type, quality and availability of third party content may change at any time during the period Cleeng Application Services is provided for; and
  - ii. features of the Cleeng Application Services that interoperate with third parties such as but not limited to Facebook, Google, Apple, PayPal, Zendesk, Adyen, Amazon Web Services (AWS), Looker and Twitter, etc. depend on the continuing availability and proper performance of such third parties' respective application programming interfaces (APIs) for use with the Services.
  - iii. features referred under c subsection ii. may operate outside the EEA. Please refer to their terms for further details. For AWS, we rely on EU Model Clauses to facilitate data transfers outside the EEA.

## 12. API Interface

- a. You must at all times fully comply with the current specifications and usage practices of the Services as described in API documentation available at <https://developers.cleeng.com/> . We have the right to adjust performance or to terminate the Agreement if you are not compliant with the specifications. Notwithstanding the previous sentence, you shall have a right to cure any alleged non-compliance within thirty (30) days of receipt of written notice of any claim of non-compliance.
- b. You must ensure that all Personal Data and transaction information requested by Cleeng to validate the authenticity of the user transaction is provided in time and in full. Cleeng has the right to adjust performance or to terminate this Agreement if we do not receive the required data.
- c. We may revise from time to time the specifications and/or data requirements needed to use the API, by giving you reasonable written notice. You shall have the right to terminate the Agreement with notice in the event that such modifications are an unreasonable burden for your business.

## 13. Confidentiality

- a. By virtue of the Agreement, we both may have access to information that is of a confidential nature ("Confidential Information"). For the avoidance of doubt, Confidential Information shall include:
  - i. the terms of the Agreement;
  - ii. all information whether of a technical nature or otherwise relating in any manner to the business or affairs of the disclosing party as may be communicated to the receiving party pursuant to this Agreement;
  - iii. Personal Data; and
  - iv. all know-how, techniques, ideas, principles and concepts which underlie any element of the Services, and which may be apparent by the use, testing or examination thereof.
- b. During the term of the Agreement and after its termination or expiration for any reason whatsoever, each party shall:
  - i. keep the Confidential Information confidential;
  - ii. not disclose the Confidential Information to any other person other than with the prior written consent of the disclosing party, or in accordance with d) below; and
  - iii. not use the Confidential Information for any purpose other than the performance of its obligations under the Agreement.
- c. A party's Confidential Information shall not include information that:
  - i. is or becomes a part of the public domain through no act or omission of the other party;
  - ii. was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
  - iii. is lawfully disclosed to the other party by a third party without restriction on the disclosure; or
  - iv. is independently developed by the other party.
- d. Parties may disclose Confidential Information for purposes of the Agreement only to those employees, agents or subcontractors (which for this purpose includes our subcontractors) involved in the Services who are required to protect it against



unauthorized disclosure in a manner no less protective than required under this Agreement, and who are themselves governed by a non-disclosure agreement or other confidentiality arrangements.

- e. The obligations of confidentiality shall not apply to any Confidential Information which:
  - i. is in the public domain, or which becomes generally available to third parties by publication or through no fault of the receiving Party;
  - ii. the receiving party is able to show to the reasonable satisfaction of the disclosing party was lawfully in its possession prior to such disclosure and was not acquired directly or indirectly from the disclosing party;
  - iii. is lawfully obtained by the receiving party from a third party not similarly bound by such confidentiality obligations; or
  - iv. is required to be disclosed by law or by any regulatory or governmental authority. In this event the receiving party shall notify the disclosing party as promptly as practicable, and if possible prior to making any disclosure, and shall use its reasonable endeavours to seek confidential treatment of such information.

## **14. Liability**

- a. We do not exclude, or limit our liability, to the extent our liability may not be excluded or limited pursuant to mandatory law in which events no limitation or exclusion of liability shall apply, typically in case of gross negligence or willful intent.
- b. Unless performance is permanently impossible, for example in the case of obligations in respect of live events, we are liable only after you issue a notice of default in which you grant us a reasonable term to remedy the breach and we attributable fail to fulfil our obligations after that term has passed.
- c. Our total liability – regardless of the legal ground a claim is based on – is limited to direct damages only and shall not exceed the fees (exclusive of taxes) paid to us by you under the Agreement during the six (6) months period immediately preceding the date when such liability arises.
- d. Our liability for indirect damages, such as consequential damages, loss of profits, loss of savings, loss of goodwill, loss due to business interruption, loss as a result of claims of your customers, loss arising from use of third parties or third party materials prescribed to us by you, is excluded.
- e. The provisions of this section and all other limitations and exclusions of liability also apply for the benefit of all (legal) persons that we engage in the performance of the Agreement.

## **15. Force Majeure**

- a. Neither of us shall be responsible for failure or delay of performance outside the reasonable control of the obligated party if caused by: an act of war, hostility, or sabotage, pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); or other event outside the reasonable control of the obligated party. We agree to use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either of us may cancel unperformed Services and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow normal disaster recovery procedures or any obligation to

pay for Services. In the event of termination, and if applicable, we will refund prepaid fees for terminated Services for the period following the effective date of termination.

## 16. Subscription Term

- a. Services are entered into for the term indicated in the Order Form and cannot be terminated during such term unless indicated otherwise in the Order Form. A term of one (1) year shall apply if no term has been included in the Order Form.
- b. After the initial term the Subscription is constantly renewed for additional one (1) year periods unless a Subscription or the Agreement is terminated in accordance with the below section on termination.

## 17. Termination Provisions

- a. The Agreement is entered into for an Initial Term as set out in the Order Form and, unless terminated, constantly automatically renews for additional one (1) year periods. The Agreement may be terminated by written notice by either of us at the end of its term with adherence of a two (2) months' notice period. Furthermore you are entitled to terminate the Agreement at any moment, however no refund shall be made in the event of such termination for convenience and all fees due under the Agreement become payable upon termination.
- b. The Agreement may be terminated immediately by written notice by either of us if any action or proceedings under any bankruptcy or insolvency law are taken by or against the other party, or if any event similar to any of the foregoing under the law of any jurisdiction has occurred in respect of the defaulting party.
- c. The Agreement may be terminated by either of us if the other party commits a material breach of any term of this Agreement which in the case of a breach capable of being remedied, has not been remedied within thirty (30) days of a written request to remedy the same.
- d. In the event the provision of any of the Services is unlawful under any law applicable to such Services, we are entitled to immediately terminate the provision of such Services without incurring any form of liability or any compensation due.
- e. Any termination of the Agreement shall not affect any other rights to which either of us may be entitled hereunder or at law, including any accrued rights or liabilities of either of us. If the Agreement is terminated within a year, Cleeng will incur a termination fee and it may set off such costs against the deposit as provided for in the Merchant Schedule. All fees agreed until a given term become payable upon a termination of the Agreement unless the Agreement is terminated by you based on b) or c) above.
- f. You will have access to the Cleeng Application for a period of three (3) months after the termination of the Agreement in order for you to download data from the Cleeng Application. We are not obliged to retain your data after this three (3) month period and we may need to store certain data after termination pursuant to applicable laws and regulations. Cleeng does not store payment information, such as credit card details, therefore payment information cannot be transferred.
- g. Furthermore, continued use of the Cleeng Application after termination will be charged against our standard pricing terms. The Agreement continues to govern you for any continued use of the Services after termination.
- h. The Parties waive the right to rescind the Agreement. Article 6:265 DCC is excluded.

## 18. Miscellaneous

- a. The Agreement replaces all prior agreements and arrangements between us relating to its subject matter and constitutes the entire understanding relating to the subject matter of this Agreement. No oral representations, warranties or promises shall be implied as terms of this Agreement unless expressly incorporated herein. The applicability of your purchasing or other conditions is excluded.
- b. If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of the Agreement.
- c. Any variation of or addition to the Agreement shall only be of any force or effect if reflected in writing and signed by both of us and expressed to amend the Agreement.
- d. A waiver by either of us of a breach of any term or condition of this Agreement in any one instance shall be in writing and shall not be deemed as a continuing waiver or a waiver of any other or subsequent breach unless the written notice so provides.
- e. Any notice issued to Cleeng under the Agreement shall be in writing and addressed to [support@publisher-cleeng.zendesk.com](mailto:support@publisher-cleeng.zendesk.com).
- f. We are entitled to assign, cede or transfer or otherwise dispose of any of its rights and obligations under the Agreement, provided that we shall give you prompt written notice of such assignment, cession, transfer or disposal.
- g. Notwithstanding any other rights, we are entitled to suspend performance of the Services in the event of non-payment of Fees due to us and in the event that we reasonably believe that there is a substantial financial or regulatory risk associated with the provision of Services to you.
- h. You hereby grant Cleeng the non-exclusive and royalty free right to use your name, logo and trademark on its website and promotional materials. You agree to reasonably cooperate with Cleeng should it request you to cooperate with the provision of a reference or the release of a press statement in connection with the execution or performance of the Agreement.

## 19. Governing law and forum

- a. The Agreement is exclusively governed by and construed in accordance with Dutch law, without reference to the choice of law provisions thereof and the applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 is excluded. In the absence of an amicable agreement, any dispute arising out of or related to this Agreement shall be determined by means of Netherlands Arbitration Institute (NAI) and in accordance with the NAI rules. The place of arbitration shall be London, the United Kingdom but the procedural laws of the Netherlands shall apply to the arbitration procedure. The arbitration shall be conducted in the English language. The arbitral tribunal shall consist of three arbitrators and decide according to the rule of law.
- b. Before resorting to any legal proceedings, we both agree to use our best efforts to negotiate in good faith and settle amicably any dispute that may arise.