Terms of Service

Last Updated – 30th April, 2021

THESE TERMS OF SERVICE (the **"Terms"**) governs how you (**"Customer"**) may use the Software-as-a-service products and other services provided by WizRocket Inc., (**"Company"**) and its affiliates. Customer and Company are each a **"Party"** and collectively the **"Parties"**.

By registering or using our Services you agree to be bound by the Terms. If you are using the Services or the Websites on behalf of an organization, you are agreeing to the Terms for that organization (in which event, "you", "your" or "Customer" will refer to that organization) and representing to the Company that you have the authority to bind that organization to the Terms unless that organization has a separate written contract in effect with us (an **"Agreement"**), in which event the Terms and the Terms will govern your use of the Services; provided that if there is any conflict between the Terms and an Agreement, the provisions of the Agreement shall prevail. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST NOT USE THE SERVICES.

We may, in our sole discretion, modify the Terms of Service via email or by posting notice on any part of the Services or the on Website. The "Last Updated" date at the top the Terms indicates when the latest modifications were made to the Terms. By continuing to access and use the Service, you agree to any such modifications. In addition, when using particular services or features, you may be subject to any posted guidelines or policies applicable to such services or features that may be posted from time to time, including but not limited to the Privacy Policy as noted below. All such guidelines or policies are hereby incorporated by reference into these Terms.

If you have any comments or questions regarding the Terms, or wish to report any violation of the Terms, you may contact us at security@clevertap.com

1. OVERVIEW

1.1. Introduction CleverTap is a cloud hosted, customer retention platform that helps consumer brands maximize the user lifetime value users obtain from mobile applications. CleverTap typically stores the events / logs related to the usage of CleverTap's customers' applications and services. CleverTap also stores Customer Content and Customer End User Data, as further described in Section 3.2.

1.2. Definitions
"Account-Related Information" means contact information and biographical information about Customer's representatives and contacts used for marketing, opening new user accounts to use CleverTap's Services, and to maintain existing accounts.

"Customer Content" means (i) data or content in the Customer Properties to which CleverTap has access; and (ii) any other data Customer submits to CleverTap or CleverTap generates for Customer in connection with the use of the Services (not including Account-Related Information and Customer End User Data).

"Claims" mean, collectively, claims, demands, suits, losses, damages, liabilities, costs, actions, judgments, and expenses (including reasonable attorney's fees).

"Customer Property" means a website or mobile application which has CleverTap code embedded in it for the purpose of tracking the usage of the website or mobile application.

"Customer End Users" means users of one or more Customer Properties.

"Customer End User Data" means Customer Content related to Customer End Users collected or generated by CleverTap in connection with providing the Services.

"Documentation" means the technical user documentation provided with the Services.

"European Personal Information" means Personal Information about a citizen of either a member state of the European Economic Area or of Switzerland.

"Intellectual Property Rights" means all forms of intellectual property rights and protections, now known or hereafter established, that may be obtained for, or may protect, technology or other assets, which includes, but is not limited to, all right, title, and interest in U.S. and foreign patents and patent applications; trade secret and nondisclosure rights; copyrights and authors' rights; and trademarks, service marks, trade names, product names, and brand names.

"Laws" means all applicable local, state, federal, foreign and international laws, regulations and conventions, including, without limitation, those related to data privacy and data disclosure, data security, international communications, and cross-border data transfers.

"Service Order or (SO)" means each Service Order referencing this Agreement.

"Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with, or could reasonably be linked, directly or indirectly, to an identified or identifiable living natural person, including but not limited to: (i) Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver's license number, government identification card number, passport number, or other similar identifiers; or (ii) information defined as "personal information," "personally identifiable information," "personal data," or similar expressions under applicable privacy or data security Law.

"Services" means CleverTap's website, its proprietary software-as-a-service solution(s) for behavior analytics and user engagement. Services shall also include a) the service or providing any corresponding SDKs, APIs, documentation or software that may be made available by CleverTap in connection with such service; b) any onboarding assistance provided; and c) subsequent enhancements, updates and bug fixes to the foregoing made generally available by CleverTap to its customers. CleverTap makes these Services available either by itself or together with its subsidiaries and affiliates.

2. CLEVERTAP SERVICES

2.1 Access to Services. Customer will purchase and CleverTap will provide the specific Services as specified in the applicable SO. Customer may access and use these Services during the Subscription Term (as defined below) solely for its own use and in accordance with the terms and conditions of this Agreement, the Documentation, and any scope of use restrictions designated in the applicable SO.

2.2. Permitted Users

a. <u>In General.</u> Use of and access to the Services is permitted by and only by employees, Contractors and Affiliates (defined below) of the Customer (**"Permitted Users"**). Customer has the ability to create as many accounts for Permitted Users as it requires. CleverTap does not restrict the number of Permitted Users on its platform. Customer will ensure that all Permitted Users keep their user ID and password information strictly confidential and not share such information with any unauthorized person. User IDs are intended to be granted to individual, named persons (not roles or groups), and may not be shared. Customer will be responsible for any and all actions taken using Customer's accounts and passwords.

b. <u>Contractors and Affiliates.</u> Customer may permit individuals serving as its independent contractors and consultants who are not competitors of CleverTap ("Contractors") and individual employees, Contractors, or consultants of Affiliates (as defined below) to serve as Permitted Users, provided Customer remains responsible for compliance by each such Contractor or Affiliate Permitted User with all of the terms and conditions of this Agreement and any such use of the Services by such Contractor or Affiliate Permitted User is for the sole benefit of Customer. Use of the Services by Permitted Users of Affiliates, Contractors and Customer in the aggregate must be within the restrictions in the applicable SO. **"Affiliate"** means any entity controlling, controlled by, or under common control with the referenced entity, where the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

2.3. General Restrictions. Customer will not (and will not permit any third party to): (a) rent, lease, provide access to, resell, or sublicense the Services to a third party or provide the Services to a third party as a managed service; (b) use the Services to provide, or incorporate the Services into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to CleverTap);

(d) copy or modify the Services or any Documentation, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the Services (including any reports or data printed from the Services); or (f) publicly disseminate information regarding the performance of the Services.

2.4. Trial Subscriptions. If Customer receives free access or a trial or evaluation subscription to Services (**"Trial Subscription"**), then Customer may use the Services in accordance with the terms and conditions of this Agreement for a period granted by CleverTap (the **"Trial Period"**). Trial Subscriptions are permitted solely for Customer's use to determine whether to purchase a paid subscription to the Services. Certain Trial Subscriptions may include pre-release and beta services or components (**"Beta Releases"**). Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription. If Customer does not enter into a paid Subscription Term, this Agreement and Customer's right to access and use the Services will terminate at the end of the Trial Period. CleverTap has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CLEVERTAP WILL HAVE NO WARRANTY, INDEMNITY, DATA ARCHIVING, SERVICE LEVEL, OR SUPPORT OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS, AND IF CUSTOMER HAS A TRIAL SUBSCRIPTION, IT WAIVES ALL CLAIMS (defined above) AGAINST CLEVERTAP ARISING OUT OF THE TRIAL SUBSCRIPTION, THE USE OF THE SERVICE, AND THIS AGREEMENT.

2.5. Privacy Practices. CleverTap's privacy practices regarding Personal Information stored using the Services are governed by the then-current version of the CleverTap privacy policy (**"Privacy Policy"**) posted at https://www.clevertap.com/privacy-policy/, as it is amended from time to time, and which is incorporated by reference herein.

3. CUSTOMER CONTENT AND CUSTOMER END USER DATA

3.1. Rights in Customer Content. As between the parties, Customer will retain all right, title and interest (including any and all Intellectual Property Rights) that Customer may have in and to the Customer Content as submitted to, generated by, or accessed through the Services. Subject to the terms of this Agreement, Customer hereby grants to CleverTap a non-exclusive, worldwide, royalty-free license to use, copy, store, transmit, modify, create derivative works of and display the Customer Content solely to the extent necessary to provide the Services to Customer.

3.2. Storage by CleverTap. Customers electronically submit Customer Content and Customers End User Data to CleverTap platform. It is Customer's responsibility to decide which data to submit to CleverTap. Unless otherwise required by the Customer, any Customer Content and Customer End User Data will be retained subject to CleverTap's data retention policies and confidentiality obligations under this Agreement. Customer specifically acknowledges that CleverTap is not obliged to maintain a backup of any data and that CleverTap may not be in a position to restore such data in case deleted at the request of the Customer.

3.3. Customer Obligations.
   a. In General. Customer will ensure that use of Service and Customer's collection, usage, storage, transmission, and disclosure to CleverTap of all Customer Content are at all times in compliance with Customer's privacy policies and all applicable Laws. Customer is solely responsible for the accuracy, content and legality of all Customer Content or Customer End User Data. Customer represents and warrants to CleverTap that Customer has all necessary rights, consents and permissions to collect, use, store, transmit, disclose to CleverTap, of all Customer End User Data and other Customer Content as contemplated in this Agreement (including granting CleverTap the rights in Section 3.1), and that no Customer Content will violate or infringe (i) any third party Intellectual Property, publicity, privacy or other rights or (ii) any Laws.
   b. Customer End Users Data. As part of the provision of the Services, CleverTap collects certain information and data related to Customers End Users. Such data is collected as determined by the Customer. CleverTap does not control or otherwise approve messages or requests for Customer End User Data made by Customer. Customer shall disclose to Customer End Users that Customer may collect such Customer End User Data from them in order to use the Customer Property and that such Customer End User Data may be sent to CleverTap thru the use of Services. Customer will provide prominent notice and disclosure of Customer's privacy policy and encourage Customer End Users End to review Customer's privacy policy and to assess the privacy and security practices of Customer. To the extent that CleverTap receives any such Customer End User Data, CleverTap shall make reasonable efforts, consistent with the terms of CleverTap's Privacy Policy to maintain the confidentiality of such Customer End User Data. CleverTap has no direct relationship with the Customer End User whose Customer End User Data it processes, although will handle Customer End User data subject access requests in accordance with the CleverTap Privacy Policy. CleverTap will not review, share, distribute or reference any such Customer End User Data except as required in order to provide Services to the Customer, if required by the law, or under other circumstances set forth in the CleverTap Privacy Policy.
   c. Customer Content Requirements. Customer will not use the Services with any Customer Content that (i) is deceptive, fraudulent, illegal, obscene, defamatory, libelous, threatening, harmful to minors, pornographic, indecent, harassing, hateful, religiously, racially or ethnically offensive, that encourages illegal or tortious conduct or that is otherwise inappropriate in CleverTap's discretion; (ii) contains viruses, bots, worms, scripting exploits or other similar materials; or (iii) could otherwise cause damage to CleverTap or any third party.

3.4. Indemnification by Customer. Customer will indemnify, defend and hold harmless CleverTap from and against any and all Claims arising out of or in connection with any claim arising from or relating to (a) any Customer Content, Customer End User Data or acts or omissions of Customer that constitute a breach or alleged breach by Customer of Section 3.3 (Customer Obligations) or (b) any service or product offered by Customer in connection with or related to the Services. This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) at Customer's expense, all necessary reasonable cooperation of CleverTap to defend a Claim. Notwithstanding the foregoing sentence, CleverTap may participate in the defense of any Claim by counsel of its own choosing, at its cost and expense and Customer will not settle any Claim without CleverTap's prior written consent, unless the settlement fully and unconditionally releases CleverTap and does not require CleverTap to pay any amount, take any action, or admit any liability.

4. DATA PROTECTION ADDENDUM.

If Customer wishes to store, transmit, or otherwise process European Personal Information using the Services or by transmitting it to CleverTap, whether that is Account-Related Information or Customer Content, Customer shall, before and as a condition to storing or transmitting European Personal Information using the Services or to CleverTap, enter into a mutually agreeable Data Processing Addendum to this Agreement containing data processing terms and conditions regarding such European Personal Information

5. OWNERSHIP

5.1 CleverTap Technology. This is a subscription agreement for access to and use of the Services. Customer acknowledges that it is obtaining only a limited right to the Services and that irrespective of any use of the words "purchase", "sale" or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that CleverTap or its suppliers retain all right, title and interest (including all Intellectual Property Rights) in and to the Services, all Documentation, Services deliverables, and any and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, **"CleverTap Technology"**). Except as expressly set forth in this Agreement, no rights in any CleverTap Technology are granted to Customer. Further, Customer acknowledges that the Services are offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of it.

5.2 Feedback. Customer, from time to time, may submit comments, questions, suggestions or other feedback relating to any CleverTap product or service to CleverTap (**"Feedback"**). CleverTap may freely use or Feedback in connection with any of its products or services without the need to pay compensation for any use of such Feedback.

6. SUBSCRIPTION TERM, FEES & PAYMENT

6.1. Subscription Term. Each Service is provided on a subscription basis for a term set forth in the SO (each, a "Subscription Term").

6.2. Fees and Payment. All fees are as set forth in the applicable SO and will be subject to the applicable payment terms set forth in the applicable SO. Except as expressly set forth anywhere in this Agreement, all fees are non-refundable. Customer is required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of CleverTap. Customer must make all payments of Fees without any setoffs, withholdings, or deduction of any kind. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

6.3. Suspension of Service. In addition to any of CleverTap's other rights or remedies (including but not limited to any termination rights), CleverTap reserves the right to suspend Customer's access to the Services if: (i) Customer's account is thirty (30) days or more overdue; (ii) CleverTap determines that Customer has breached Section 2.3 (General Restrictions) or Section 3.3 (Customer Obligations); or (iii) CleverTap determines that suspension is necessary to prevent harm or liability to other customers or third parties, or to preserve the security, stability, availability or integrity of the Services. CleverTap will have no liability for taking action as permitted above in this section. However, unless this Agreement has been terminated, CleverTap will cooperate with Customer to restore access to the Services once it satisfies that Customer has resolved the condition requiring suspension.

7. TERM AND TERMINATION

7.1. Term. This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms under Service Orders.

7.2. Termination for Cause. Either party may terminate this Agreement (including all related SOs) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days).

7.3. Effect of Termination. Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Services and delete (or, at CleverTap's request, return) any and all copies of the Documentation, any CleverTap passwords or access codes and any other CleverTap Confidential Information in its possession. Provided this Agreement was not terminated for Customer's breach, Customer may retain and use internally copies of all reports exported from any Service prior to termination. Customer acknowledges that following termination it will have no further access to any Customer Content or Customer End User Data input into any Service, and that CleverTap may delete any such data as may have been stored by CleverTap at any time. Any Fees accrued but not paid shall become immediately due and payable upon Termination.

7.4. Survival. The following Sections will survive any expiration or termination of this Agreement: 2.3 (General Restrictions), 2.4 (Trial Subscriptions), 3.2 (Storage by CleverTap), 3.4 (Indemnification by Customer), 5 (Ownership), 6.2 (Fees and Payment), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 8.3 (Specific Disclaimers), 10 Limitation of Remedies and Damages, 11 (CleverTap Indemnification), 12 (Confidential Information), and 13 (General Terms).

8. LIMITED WARRANTY

8.1. Limited Warranty. CleverTap warrants, for Customer's benefit only, that each Service will operate in substantial conformity with the applicable Documentation. CleverTap's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for CleverTap to use commercially reasonable efforts to correct the reported non-conformity, or if CleverTap determines such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for use of such Service for the terminated portion of the applicable Subscription Term. CleverTap shall be entitled to bill, in such cases, for the period for which Services were utilized by Customer. The limited warranty set forth in this Section 8.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided based on a Trial Subscription.

8.2. Warranty Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1, ALL SERVICES ARE PROVIDED "AS IS". NEITHER CLEVERTAP NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. CLEVERTAP DOES NOT WARRANT THAT CUSTOMER'S USE OF ANY SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES CLEVERTAP WARRANT THAT IT WILL REVIEW THE CUSTOMER CONTENT FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER CONTENT OR CUSTOMER END USER DATA WITHOUT LOSS. CLEVERTAP WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CLEVERTAP. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

8.3. Specific Disclaimers. TO THE EXTENT PERMITTED BY LAW, AND EXCEPT AS SET FORTH IN SECTION 9 AND ANY SERVICE ORDER, CLEVERTAP IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM (I) THE TRANSFER OF DATA OVER PUBLIC COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, OR (II) ANY DELAY OR DELIVERY FAILURE ON THE PART OF ANY OTHER SERVICE PROVIDER NOT CONTRACTED BY CLEVERTAP, AND CUSTOMER ACKNOWLEDGES THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. CUSTOMER ACKNOWLEDGES THAT CLEVERTAP CANNOT GUARANTEE THE ABSOLUTE PREVENTION OF CYBER-ATTACKS SUCH AS HACKING, SPYWARE, AND VIRUSES. ACCORDINGLY, CLEVERTAP SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED DISCLOSURE, LOSS OR DESTRUCTION OF CUSTOMER CONTENT ARISING FROM SUCH RISKS.

9. SERVICE LEVELS & TECHNICAL SUPPORT.

The Services shall be subject to the Service Level and Technical Support as agreed, if any, under respective SO. CleverTap does not provide any assurances as to functioning or service levels of Customer Property or to Customer End User. Customer acknowledges that CleverTap does not provide support to Customer End Users in any manner whatsoever.

10. LIMITATION OF REMEDIES AND DAMAGES

10.1 Consequential Damages Waiver. EXCEPT FOR THE EXCLUDED CLAIMS DEFINED BELOW, NEITHER PARTY SHALL HAVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, OR THE DOCUMENTATION FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

10.2 Liability Cap. COMPANY'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, THE DOCUMENTATION, OR THE CLEVERTAP CODE AT ANY TIME WILL NOT EXCEED $100 UNDER THE APPLICABLE SO.

10.3 Excluded Claims. "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.3 (General Restrictions); (b) under Section 3.3 (Customer Obligations) and Section 3.4 (Indemnification by Customer); or (c) from a party's breach of its obligations in Section 13 (Confidential Information).

10.4 Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 10 apply regardless of the form of action, whether in contact, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

11. CONFIDENTIAL INFORMATION

11.1. "Confidential Information" or "CI" shall mean non-public confidential or other proprietary information that is disclosed by one party (the "Disclosing Party" with respect to such information) to the other party (the "Receiving Party" with respect to such information) under this Agreement or is obtained by the Receiving Party in connection with its dealings with the Disclosing Party.

11.2. CI includes, without limitation, hardware and software designs and code; research; inventions; processes; schematics; drawings; product or service specifications and documentation; technical data; business, service, and product plans; marketing plans; forecasts; information about potential customers or vendors; customer or vendor lists; pricing information; other financial and sales information; and other confidential business information. CI also includes any information disclosed by a Disclosing Party to a Receiving Party that is considered to be confidential information in a nondisclosure agreement with a third party after the Receiving Party is notified of such non-disclosure agreement.

11.3. CI shall not include information that: (i) is in the Receiving Party's possession without restrictions of confidentiality prior to receipt from the Disclosing Party, (ii) is or becomes public knowledge other than due to disclosure by the Receiving Party, (iii) became known to the Receiving Party from a source other than the Disclosing Party other than by the breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party, if such development was accomplished without the use of the Disclosing Party's CI.

11.4. The Receiving Party shall (i) not disclose to any third party any portion of the CI it receives from the Disclosing Party without the prior written consent of the Disclosing Party; (ii) not use or exploit the CI in any way except for the purpose of internal review of the CI to evaluate the Transaction, to perform the agreement embodying the Transaction, or as otherwise specifically licensed by the Disclosing Party; (iii) promptly return or destroy, at the Disclosing Party's option, all materials and documentation comprising or containing the CI received from the Disclosing Party in accordance with Section 3 upon completion of the review or use, or upon request of the Disclosing Party; (iv) take all reasonably necessary precautions to protect the confidentiality of the CI received hereunder and exercise at least the same degree of care in safeguarding the CI as the Receiving Party would with its own confidential information, but in no event less than a reasonable degree of care; (v) disclose CI to employees or Representatives (as defined below) only if they have a need to know the CI; (vi) cause its employees or Representatives who receive access to CI to abide by the restrictions and terms of this Agreement; and (vii) promptly advise the Disclosing Party in writing upon learning of any unauthorized use or disclosure of the CI.

11.5. "Representative" means an agent, attorney, accountant, financial advisor, contractor, or other representative of the Receiving Party outside the Receiving Party's organization. The Receiving Party shall not disclose any CI of the Disclosing Party to a Representative of the Receiving Party unless the Representative is either (i) subject to a written confidentiality agreement between the Receiving Party and the Representative obligating the Representative to maintain such CI in confidence, or (ii) otherwise subject to fiduciary obligations of confidentiality under applicable law that would require the confidential treatment of the CI.

11.6. If the Receiving Party is required by a government body, court of competent jurisdiction, or judicial or administrative process to disclose any of the Disclosing Party's CI, the Receiving Party shall give the Disclosing Party reasonable advance notice so that the Disclosing Party may contest the disclosure or seek a protective order. Provided such notice is given, no such disclosure shall constitute a breach of this Agreement.

11.7. The Receiving Party acknowledges that breach of this Section 12 will cause irreparable harm to the Disclosing Party that is inadequately compensable in damages. Accordingly, the Receiving Party hereby acknowledges that the Disclosing Party is entitled to seek the issuance of any injunctive relief or the enforcement of other equitable remedies against it in any suit by the Disclosing Party to compel performance of any of the terms of this Section 12.

12. GENERAL TERMS

12.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized will be null and void.

12.2. Severability. The unenforceability of any provision or provisions of this Agreement shall not render unenforceable or impair its remainder. If any provision of this Agreement is deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties.

12.3. Governing Law; Jurisdiction and Venue. This Agreement will be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. All disputes relating to or arising out of this Agreement shall be resolved in a state or federal court located in Santa Clara County, California, USA, and the parties hereby consent to the jurisdiction of such courts.

12.4. Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs incurred in connection with such action.

12.5. Notice. While the parties may communicate by any means in the performance of this Agreement, any notice of termination or other legal notice to a party shall be in writing and sent to the address of such party above (or any successor address designated by a notice hereunder) by either (i) nationally-known courier service that confirms delivery in writing or email, in which case notice will be deemed given upon receipt or (ii) registered or certified mail, postage prepaid and return receipt requested, in which case notice is deemed given the third business day after such notice is deposited in the mail. Email notices are effective only if the sender receives confirmation of receipt from the recipient.

12.6. Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement.

12.7. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

12.8. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay money) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party (each, a "Force Majeure Event"), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or data or telecommunications networks or services.

12.9. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf.

12.10 Export Control. In its use of the Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

12.11. Government End-Users. Elements of the Services are commercial computer software. If the user of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. All Services and CleverTap Technology were developed fully at private expense.

12.12. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and digital or electronic signatures shall be deemed to be handwritten signatures.

12.13. Marketing. CleverTap may use Customer's name and logo on CleverTap's website and other marketing materials solely to identify Customer as a Customer of CleverTap (without revealing any Confidential Information).

Product

Customer Data & Analytics / Experimentation & Optimization / Personalization / Campaign Orchestration / Clever.AI / Product Releases / Developer Documentation / Product Documentation / CleverTap Tech

Feature Highlights

Push Notifications / Email Automation / WhatsApp / In-App Messaging / Web Messaging / SMS / Signed Call™ / Scribe / IntelliNODE / RenderMax

Solutions

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