

GENERAL TERMS AND CONDITIONS OF OUTSMART BV 1 JUNE 2020 V2.0

Article 1 Definitions

1. In these general terms and conditions of OutSmart International B.V. (hereinafter referred to as: **"General Conditions"** the terms written with a capital bear the meaning ascribed to them in subsection 3 (additional terms indicated with a capital letter are defined in these General Conditions).
2. The use of the words "contains" and "includes" when introducing an element or a list of elements does not limit the meaning of the words to which the element or the list refers, to those elements or elements of a comparable nature.
3. Definitions:
 - a. **"Subscription"**: means the right of the Client to make use of a Service during the Subscription Period.
 - b. **"Subscription Period"**: means the period of the Subscription during which the Client has the right to receive the Service.
 - c. **"GDPR"**: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation).
 - d. **"Content"**: the contents of the Client's profile on the Platform, irrespective of whether the contents have been added to the profile by the Client itself or by third parties.
 - e. **"Services"**: the services to be provided by OutSmart within the scope of and related to the OutSmart.com (and all related domain name extensions and URLs such as but not limited to out-smart.com/de, out-smart.com/pt, out-smart.com/es, etc.) and this Agreement, including but not limited to the Software, Platform, Releases, maintenance and Service Packs.
 - f. **"Client"**: the legal person or the natural person who acts in the course of a profession, who purchases OutSmart's Services or who intends to purchase those Services.
 - g. **"Mobile Website(s)"**: website(s) which has/have been made suitable to use on mobile equipment, including but not limited to tablets and smartphones, and which have been developed by or for OutSmart.
 - h. **"New Licenses"**: additional licenses which are provided to Clients using an existing OutSmart account for which the Client owes a fee to OutSmart.
 - i. **"Agreement"**: the agreement which becomes effective between the Client and OutSmart in accordance with the provisions of article 3 of these General Conditions and of which these General Conditions form an integral part.
 - j. **"Parties"**: OutSmart and the Client either separately or together.
 - k. **"Platform"**: the App and/or mobile website "out-smart.com" and all related domain name extensions and URLs such as but not limited to out-smart.com/de, out-smart.com/pt-pt, out-smart.com/es, out-smart.com/en, etc.
 - l. **"Trial Subscription"**: means the possibility for a new Client (or a Client who is considering using/buying a Service), to use the Service for a trial period of one (1) month (or another trial period

jointly agreed in writing), without a fee being invoiced and for which, based on the Agreement, the Client does not owe a fee to OutSmart.

m. **“Release”**: an improved version of the Software in which an important adjustment is made to its functionality including a higher version number. Improvement may include bug fixes. Additional improvements and user simplifications of the Software which were not present upon acceptance and which are part of the new software options or new modules are not included.

n. **“Service Pack”**: a version of the Software in which a small adjustment, an improvement or a solution for an imperfection or bug has been made within the current Release.

o. **“Software”**: the default executable software of OutSmart, apps, and Mobile Websites which are made available to the Client under the terms of the Agreement.

p. **“System Requirements”**: the minimum requirements OutSmart requires from time to time of the computer system of the Client with respect to hardware and software of third parties.

q. **“User”**: the Client for whom a User-ID has been created, which gives access to the Software (regardless of whether the natural person uses the Software or not).

r. **“User-ID”**: a code designated exclusively for the User, consisting of a username and password. The User-ID may only be used by the User.

s. **“Confidential Information”**: the Client’s confidential information about OutSmart including (i) information which has been indicated as confidential in writing. (ii) information which has not been made generally accessible by the Party to which the information relates and/or from which the information originates, and/or the confidential nature of which should be considered to have been known to the other Party.

t. **“OutSmart Account”**: the Client’s account to which the Client is granted access by means of his User-ID.

u. **“OutSmart”**: OutSmart International B.V. with its registered office at Nevelgaarde 5a in Nieuwegein (3436 ZZ), the Netherlands.

Article 2 Applicability

1. These General Conditions are applicable to all offers, quotations and Agreements under which OutSmart provides Services of whatever nature and under whatever name to the Client. All offers, quotations and other communications from OutSmart are without obligation unless explicitly indicated otherwise in writing by OutSmart.

2. Deviations from and additions to these General Conditions are only valid if they are agreed upon in writing by the Parties.

3. The applicability of the Client’s purchasing, delivery or other conditions and general conditions is specifically excluded, unless OutSmart explicitly agreed to the Client’s general conditions in writing.

4. If any provision of these General Conditions is void or voidable, the other provisions of these General Conditions will remain fully enforceable. In such a case, OutSmart and the Client will enter into discussions in order to agree a new provision to replace the void or voidable provision which as far as possible takes account of the purpose and scope of the original provision.

5. OutSmart is entitled to alter these General Conditions. Alterations become effective a month after the alterations have been announced to the Client, or a later date specified by means of an electronic written notice unless indicated otherwise in the General Conditions. If the Client wants to reject the alterations to the General Conditions, OutSmart is entitled, up to the effective date of the alterations, to indicate electronically or in writing that it will maintain the previous version of the General Conditions. After the effective date and without having received notice to the contrary from the Client, the Client will be considered to have accepted the alterations tacitly.

Article 3 Formation of the Agreement

1. The Client guarantees the correctness and completeness of the data provided by it or on its behalf to OutSmart on which OutSmart bases its offer for the delivery of Services.
2. An Agreement becomes effective after offer and acceptance between OutSmart and the Client. Delivery of the OutSmart Account becomes effective as soon as OutSmart provides the User-ID data to the Client regardless of whether the Client uses this and only after the Client has accepted the Agreement. The Client can consult the Agreement in license manager which forms part of the Services.
3. Upon the formation of the Agreement, the Agreement will replace all other agreements that preceded it, including the negotiations and anything that related to the realization of the Agreement.

Article 4 Services

1. OutSmart shall provide the Client with the Services pertaining to Software as a Service, as specified in the Agreement between the Parties and the other Services agreed upon by the Parties.
2. Unless otherwise agreed in writing, the Client is responsible for the management [of the Service] which includes monitoring the settings, the use of the Service and the way the results of the Service are implemented.

Article 5 Execution of the Services

1. OutSmart shall use its best efforts to carefully carry out the Services, where relevant in accordance with the arrangements and procedures agreed with the Client in writing. All of OutSmart's Services are executed based on a best efforts obligation, unless and in so far as a result was explicitly promised in the written Agreement, and the result concerned is also described with sufficient determinability. Arrangements concerning a service level if any, shall always only be explicitly agreed in writing.
2. OutSmart only performs the Services upon the Client's instructions. If OutSmart performs activities based on a request or an authorized order from a government body or in connection with a statutory obligation relating to the Client's, its employees' or Users' data, all related costs will be charged to the Client.
3. Notwithstanding article 2, subsection 5, OutSmart may alter the contents or extent of the Service. If such alterations will result in a change to the Client's prevailing procedures, OutSmart will inform the Client in good time about this and the Client will be charged for the costs of the alteration. In that case

the Client may terminate the Agreement in writing from the date on which the alterations become effective, unless the alterations relate to alterations to the relevant legislation or other regulations issued by authorized bodies or if OutSmart bears the costs of these alterations.

4. OutSmart can continue to execute the Service using a new or adjusted version of the Software. OutSmart is not obliged to maintain, change or add features to or functionalities of the Service or Software specifically determined for the Client.

5. OutSmart may completely or partially take the Service out of use for maintenance. OutSmart shall not let the period of inactivity take longer than necessary, it will if possible let it take place out of office hours, and depending on the circumstances, have it start after having informed the Client through the Platform.

Article 6 Price and payment

1. All prices are exclusive of turnover tax (VAT) and other levies which are or will be imposed by the government. Clients established outside the Netherlands do not owe any VAT to OutSmart.

2. Payment for the licenses will be made by the Client monthly or annually in advance depending on the payment method chosen by the Client. The Client will receive an email with an invoice after the payment. By entering into the Agreement, the Client irrevocably authorizes OutSmart to collect the amounts due for the term of the Agreement and after termination of the Agreement, in so far as the amounts that are to be collected relate to amounts due from the period when the Agreement had not yet been terminated. The authorization is also applicable to third parties engaged by OutSmart to collect the amounts OutSmart is entitled to.

3. If the Client consists of multiple natural persons and/or legal entities, each of the persons is bound jointly and severally to pay the amounts due under these General Conditions.

4. If the Client challenges the invoice, the Client must inform OutSmart within thirty (30) days following the invoice date via the OutSmart Account that it is challenging the invoice and state the reasons for that clearly and completely. If the Client does not challenge the invoice within the abovementioned period, it is considered to have accepted the invoice.

5. If the payment is in arrears for 3 months, the OutSmart Account will be closed until the amount due has been paid or until further arrangements have been made with OutSmart. The Client will receive instructions by email about the way the outstanding invoices can be paid and when the account will be reactivated.

6. If the Client has a periodic payment obligation, OutSmart is entitled to change the applicable prices and fees in writing with due observance of a notice period of one (1) month. These price changes are published on out-smart.com. If the Client does not agree to such a change, the Client is entitled to terminate the Agreement through the Platform within fourteen (14) days following the announcement by the date on which the adjustment would be effective. However, the Client is not entitled to terminate

if the Parties agreed that the applicable prices and fees would change in compliance with an index or other criteria agreed upon by the Parties.

7. If the Client does not pay the amount due, or does not pay it on time, the Client is in default without a demand or notice of default being required. If the Client continues to be in default after a demand or notice of default, OutSmart can pass on the claim, in which case in addition to the total amount due the Client will be obliged to pay all judicial and extrajudicial costs, including all costs charged by external experts. Commencing on the day on which the Client is in default (due date of the invoice), without further notice of default OutSmart will be entitled to:

a) one-off administration costs of EUR 7.50;

b) one percent (1%) interest a month starting on the due date until all payments have been made unless the statutory commercial interest rate is, at that point, higher, in which case the statutory commercial interest rate applies;

c) extrajudicial costs in accordance with “the Compensation for Extrajudicial Collection Costs Decree”, as mentioned in article 6:96 subsection 4 of the Dutch Civil Code if the Client is a consumer. These costs may be increased by the turnover tax due;

d) extrajudicial costs, which costs are 15% of the principal sum due and set at a minimum of €40 if the Client is a legal person or a natural person acting in the performance of a profession or as a company.

8. It may occur that OutSmart applies adjustments in its software-versions or that OutSmart adds new functions for which other fees apply. If OutSmart applies adjustments to its fees, OutSmart shall always notify this six weeks prior to the adjustments. If the Client disagrees with the adjustment, the Client may terminate the Agreement. If the Client continues to use OutSmart after six weeks, the Client automatically agrees with the adjustment(s). OutSmart can change the fees annually based on the annual inflation adjustment. OutSmart shall notify the Client thereof no less than six weeks in advance. If such a case may occur, the Client may also terminate the Agreement.

Article 7 Account conditions

1. The Client must be listed in the Commercial Register of the Chamber of Commerce and must immediately submit an extract upon the request of OutSmart. In so far as the Client is not listed in the Commercial Register of the Chamber of Commerce, OutSmart is authorized to terminate the Services at its own discretion. Any unpaid amounts become immediately due and payable.

2. The Client must be a person, accounts registered by ‘robots’ or any other automated methods are prohibited.

3. The Client is at all times responsible for keeping its User-ID secret. OutSmart cannot be held liable for the loss or the consequences if the User-ID is publicly disclosed, except in the event that this is attributable to OutSmart.

4. The Client is responsible for all activities and Content uploaded from the OutSmart account, and for the users of New Licenses.

Article 8 Confidential Information

1. The Client and OutSmart will ensure that all data received from the other Party which they know or which they can reasonably assume are confidential, remain secret. The Party which receives Confidential Information will only use this for the purpose for which it is provided. Data are considered confidential if they are indicated as such by one of the Parties.

Article 9 Privacy, data processing and security

1. OutSmart provides the Client with a privacy page on which the Client can itself install privacy settings. In addition, OutSmart has a privacy statement which, among other things, explains how the personal data of the Client and its contact person are used.

2. If OutSmart processes personal data under the Agreement on behalf of the Client (and OutSmart in that case qualifies as a 'Processor' as referred to in Article 4, subsection 8 GDPR), the Parties will enter into a processing agreement under the terms of the GDPR as attached to these General Conditions in appendix 1.

3. If, under the Agreement, OutSmart is obliged to provide some form of information security, that security will conform with article 32 of the GDPR (at least where it concerns personal data) and the specifications with regard to security as agreed upon in writing by the Parties. OutSmart never guarantees that information security will be effective at all times. If the Agreement lacks an explicitly described security measure, the security will meet the level that, considering the state of the art, the sensitivity of the data, and the costs related to the security, is not unreasonable.

4. If, upon the performance of the Agreement or otherwise, computer-, data- or telecom facilities are used, OutSmart has the right to assign a User-ID to the Client. OutSmart has the right to change any assigned User-ID. The Client handles the User-ID confidentially and with care and only makes it known to authorized employees. OutSmart is never liable for damages or costs resulting from using or misusing any User-ID, unless the misuse was facilitated as a direct result of OutSmart acting or failing to act.

Article 10 Retention of Title

1. All objects issued to the Client remain the property of OutSmart until all amounts the Client owes OutSmart under the Agreement between the Parties, have been paid in full to OutSmart.

2. OutSmart may retain the items, products, proprietary rights, data, documents, Software, data files, and (interim or final) results of the Services of OutSmart, received or generated under the Agreement, despite there being an existing obligation to surrender or transfer, until the Client has paid all the amounts due to OutSmart.

Article 11 Risk

1. The risk of loss, theft, embezzlement or damage to items, products, data, documents, Software, data files or data (codes, passwords, documentation etc.) which are produced or used when executing the Agreement passes to the Client when it or its agent comes into actual possession of them. In so far as these objects are in the actual possession of OutSmart or its agents, OutSmart bears the risk of loss, theft, embezzlement or damage.

2. In so far as the Software OutSmart is to deliver is open source software, the risk passes to the Client at the time the Software is delivered to the Client in accordance with these General Conditions. From that time onwards OutSmart is no longer liable for any shortcomings which are not attributable to OutSmart and which, for instance, are the result of the Software being edited by the Client, its employees or third parties engaged by it.

Article 12 Intellectual Property

1. All intellectual property rights to the Software, source codes, websites, data files, equipment or other materials such as analyses, designs, documentation, reports, quotations, and preparatory materials therefor, developed or provided to the Client under the terms of the Agreement, are exclusively vested in OutSmart, its licensors or suppliers. The Client exclusively acquires the rights of use which have explicitly been granted under these General Conditions and the law. The Client's right of use is not exclusive, not transferable to third parties, and not sub-licensable unless the Client and OutSmart have entered into a partnership agreement which grants the Client the right to resupply the Services and/or which grants a sub-license for the intellectual property.

2. The Client is not authorized to remove or change any details about the confidential nature, or regarding copyrights, patent rights, brands, trade names or any other intellectual property right from the Software, websites, data files, equipment or materials.

3. Even if the Agreement does not explicitly provide authorization for that purpose, OutSmart has the right to take technical measures to protect the Software, equipment, data files, websites, source codes, etcetera in connection with an agreed limitation on the contents or the term of the right of use of these objects. The Client is not allowed to remove or bypass such technical provisions (or have them removed or bypassed).

4. OutSmart indemnifies the Client against any claims of third parties based on the assertion that Software, websites, data files, equipment, source codes or other materials developed by OutSmart breach an intellectual property right of the third party concerned, on condition that the Client immediately informs OutSmart about the existence and the contents of the claim of the third party, and leaves OutSmart to deal with the case, including any possible settlement. The Client will provide OutSmart with the necessary authorizations, information and cooperation to put up a defense against these claims, if necessary in the Client's name. This obligation to indemnify comes to an end if the infringement complained of is connected to (i) material provided by the Client to OutSmart to use, edit, process or incorporate it, or (ii) changes the Client has made or has had a third party make to the

Software, website, data files, equipment or other materials. If it is irrevocably established in court that the Software, websites, data files, equipment or other materials developed by OutSmart infringe any intellectual property right belonging to a third party or if, in OutSmart's opinion, there is a fair chance that such an infringement is occurring, OutSmart will, if possible, make arrangements so the Client can continue to use the delivered or other functionally equivalent software, websites, data files, equipment or materials. Any other or further obligation on OutSmart to indemnify is excluded.

5. All rights, including applicable ancillary rights, with regard to combinations of word- and/or figurative marks or parts thereof which have been or will be made available in whatever form by the Client for the performance of the Agreement belong exclusively to the Client, regardless of the way they are used or stored, unless agreed otherwise in writing. The aforementioned word- and/or figurative marks shall not be reproduced, copied, provided or disclosed to third parties by OutSmart, or used other than exclusively for the performance of the Agreement.

Article 13 Right of use

1. The Client only acquires the user rights which are explicitly granted in these General Conditions, the Agreement and the law. Any other or further reaching right of the Client to reproduce the Software, websites, data files or other materials is excluded. Any right of use to which the Client is entitled is in all cases not exclusive and not transferable to third parties.

2. The Client may only grant access to the Software by means of the User-Ids provided by OutSmart and within the scope of the limitations mentioned in the Agreement such as the number of Users and such like.

3. The user right includes the right to use the documentation forming part of the Software.

4. The user right to the Software does not come into force until the Client has signed the Agreement or has accepted the confirmation of the assignment and has accepted the applicable General Conditions in writing or electronically.

5. The Client is not permitted to use the Software / let the Software be used for or by other or more than the maximum number of Users or other parameters which limit the use as mentioned in the Agreement.

6. Under the terms of this Agreement the Client should:

a) at all times make sure that the OutSmart account, the Software and documentation are sufficiently protected against misuse, damage (including damage as a result of latencies such as viruses, worms, trojan horses, logic bombs, etc.), theft or destruction by anyone;

b) prevent unauthorized persons from distributing, copying, reproducing, translating, adjusting, analyzing, decompiling, counterfeiting, changing, reconstructing, having access to the OutSmart Account, the Software and/or the documentation;

c) inform OutSmart immediately of all particulars relating to unauthorized access, unauthorized copying, changing or use of the OutSmart Account, the Software and/or the documentation; d) make sure that

the limitations such as the permitted number of Users and such like, as mentioned in the Agreement, are not exceeded.

7. The Client is fully responsible for the receipt of correct and correctly formatted data by the Software from all software and hardware that exchange data with the Software or through which data is submitted to the Software.

Article 14 Support

1. OutSmart has a support help desk which is available on working days between 09.00 and 17.00.
2. Support can only be requested by the Client and its employees.
3. If it turns out that the Client was not entitled to support, or if it appears that the actions do not fall within the scope of support, OutSmart can pass on the costs of the support offered to the Client at the then applicable rates, and the Client will owe OutSmart the passed-on costs.
4. All maintenance services are usually performed on working days between 09.00 and 17.00. Additional or extended opening hours are possible. OutSmart will inform the Client about this in good time.

Article 15 Maintenance

1. Maintenance includes the detection of and remedying all defects in the Software, reported by the Client to OutSmart, to the best of OutSmart's ability.
2. OutSmart will regularly make an update of all data files which are generated, used and/or applied by the Software.
3. OutSmart may require the Client to adjust its software or hardware to the new System Requirements as indicated by OutSmart in connection with increased functionality or higher demand Service Packs or Releases of the Software or other security or other updates. If the Client fails to observe these new System Requirements, and still uses or attempts to use the Software, OutSmart is not in any way responsible for any ensuing damage. Nor is OutSmart responsible for the good functioning of the Platform, the Services or the Software if the Client fails to meet the new System Requirements.
4. Maintenance services do not include:
 - a) Services regarding system configuration, hardware and networks which belong to the Client or are under its responsibility;
 - b) structural work such as defining lay-outs;
 - c) on-site support at the Client's;
 - d) expanding the functionality of the Software at the Client's request;
 - e) Services regarding external databases or products/services of parties other than OutSmart;

- f) training or other services which are not explicitly described in this Agreement;
- g) maintenance of or Support for software of OutSmart other than the Software and/or control software of OutSmart;
- h) maintenance of or support for hardware including mobile equipment which belong to the Client or are under its responsibility;
- i) repairs to files the need for which cannot be attributed to OutSmart's Software;
- j) the provision of services other than the Software and related Services which are marketed by or on behalf of OutSmart;
- k) the reproduction and/or replacement of corrupted or lost data;
- l) Services ensuing from changes to or glitches in the system on which the Software operates (e.g. network outages, updates to non-OutSmart software);
- m) support for the links created in the Software by the Client;
- n) support with regard to the changes to the links which were last amended in the Software by the Client;
- o) support regarding breakdowns or incorrectly operating Software which result from significant changes or amendments to the Software or the configuration of the Software in comparison with the configuration at the time of delivery.

Article 16 Delivery and delivery periods

1. All delivery periods and delivery dates mentioned or agreed upon by OutSmart are set to the best of its knowledge based on the data known to it upon entering the Agreement. Interim delivery dates mentioned by OutSmart or agreed upon between the Parties are target dates, do not bind OutSmart, and are approximate only. OutSmart will make reasonable efforts to observe final delivery periods and final delivery dates as far as possible.
2. OutSmart is not bound to a final delivery period or delivery date which cannot be met due to circumstances beyond its control which occurred after entering into the Agreement.
3. Exceeding the final delivery period or delivery date mentioned by OutSmart or agreed upon between the Parties does not entail OutSmart being in default. In all cases – consequently also in the case that the Parties have agreed upon a final delivery period or delivery date in writing and explicitly – OutSmart is not in default due to exceeding a deadline until the Client has given it written notice of default and a reasonable term for remedying the non-performance has been granted. The notice of default must include an as complete and detailed description of the default as possible, so that OutSmart is provided with the opportunity to properly remedy the breach if possible.

Article 17 Duration of the Agreement

1. The Agreement is entered into for the duration of the Trial Subscription. During the Trial Subscription the Client has the right to terminate the Agreement at any time in accordance with the provisions of article 18.

2. After the expiry of the Trial Subscription, the Trial Subscription is automatically terminated, and the Client must subsequently activate the Subscription for a period of one (1) year which will be invoiced monthly or annually in accordance with article 6.2.

The Subscription Period of one (1) year, in accordance with the preceding paragraph, will each time be automatically renewed by the previous Subscription Period entered into.

3. The Client is entitled to unsubscribe at any time during the Subscription Period in accordance with the provisions of article 18. Invoicing for this Subscription Period takes place in accordance with article 6.2.

4. Paragraphs 1 and 2 of this article do not apply if the Client has purchased New Licences. In that case a Subscription for the period of one (1) month or one (1) year applies automatically, depending on the chosen recurrent payment which will be invoiced monthly according to the provisions of article 6.2.

Article 18 Cancellations

1. The Subscription can be cancelled by the Client, subject to a period of notice of one (1) month. The Services will be delivered by OutSmart until the Subscription has been cancelled. The Client has no right to a refund of prepaid subscription fees. The Client is responsible for unsubscribing from the OutSmart Account. In the case of both monthly or annual payments the Client can only cancel by contacting OutSmart by phone or in writing and only if the Client has paid all invoices due. Other forms of cancellation are not accepted and thus cannot be processed.

2. When the Client unsubscribes from the OutSmart Account, observing the notice period, the account (including the payment) is immediately cancelled after expiry of the prepaid Subscription Period.

3. The Client's data will be removed 3 months after unsubscribing from the account unless OutSmart is required by law to save certain data.

4. The Client is at all times responsible for the legal retention obligation regarding its work orders and administration, including after termination of its OutSmart Account.

5. OutSmart can terminate the Agreement in writing at all times, observing a notice period of two months after which the Client may no longer use its OutSmart Account. In the event of termination by OutSmart, the Client has the right to a refund of the prepaid subscription fees in so far as these concern the period after the termination of access to its OutSmart Account.

Article 19 Termination

1. Each Party is only authorized to terminate the Agreement due to an attributable breach in the performance of the Agreement, if the other Party imputably fails to perform essential obligations under

the Agreement, in all cases after an as detailed as possible notice of failure in writing, where a reasonable period is set to remedy or remove the non-performance. Payment obligations of the Client and all other obligations on the Client or third parties engaged by the Client to cooperate, are considered essential obligations under the Agreement.

2. If the Client has already received Services under the Agreement at the time of termination as set out in article 19.1, the Services and the related payment obligation cannot be undone, unless the Client proves that OutSmart is in default with respect to the essential part of those Services. Any amounts OutSmart invoiced before the termination for work OutSmart had already properly performed or delivered in order to execute the Agreement, nevertheless remain due, subject to the provision in the previous sentence, and are immediately payable at the time of termination.

3. Each Party may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the other Party is granted a provisional or full suspension of payments, if a petition for insolvency or bankruptcy is filed with regard to the other Party or if the other Party's company is wound up or terminated for other reasons besides a business reorganization or merger or if the decisive control over the Client's company alters. OutSmart shall never be obliged on account of this termination to refund money already received or to pay damages. In the event of the Client's bankruptcy or insolvency, the right to use Software, websites and such like which had been made available to the Client shall terminate by operation of law.

Article 20 Warranty

1. OutSmart does not guarantee that the Software put and kept at the disposal of the Client in the context of the Service as a Service ('SaaS') will be free of errors and will function without interruption. OutSmart shall use its best efforts to repair defects in the Software within a reasonable period if and in so far as it concerns Software developed by OutSmart and the defects/shortcomings concerned have been described in detail and reported to OutSmart in writing within 10 working days.

2. If the Client has reported a defect/shortcoming, OutSmart can postpone repairing the defects until a new version of the Software is put into use. OutSmart does not guarantee the repair of defects in software which has not been developed by OutSmart. OutSmart is entitled to install temporary solutions, program bypasses or problem avoiding restrictions in the Software. If the Software has been developed by order on the Client's instructions, OutSmart is entitled to charge the Client in accordance with its usual fees for repair.

3. OutSmart shall not be responsible for checking the accuracy and completeness of the results of the Services and the data generated by using the Service. The Client shall itself regularly check the results of the Services and the data generated by using the Service. OutSmart is not responsible for the Content the Client posts in the OutSmart Account either.

4. The Client shall make an inventory of the risks for its organisation on the basis of information supplied by OutSmart with regard to steps to prevent or limit the consequences of breakdowns, defects in the Service, mutilation or loss of data or other incidents, and if necessary take additional measures.

OutSmart expresses its readiness to cooperate in all reasonableness at the Client's request in further measures taken by the Client subject to the financial and other conditions set by OutSmart. OutSmart shall never be responsible for the repair of corrupted or lost data.

5. OutSmart does not guarantee that the Software which will be made available to and kept available for the Client in the scope of Application Service Provision and/or Service as a Service, will promptly be adjusted to alterations in the relevant legislation and regulations.

Article 21 Liability

1. OutSmart's total liability due to an imputable failure to perform the Agreement or on any other basis, expressly including any shortcoming in the fulfilment of an obligation agreed upon with the Client, is limited to the compensation of direct damage up to a maximum of the net amount agreed upon (excl. VAT) for the month in which the damage occurred or from which it resulted.

2. OutSmart's liability is in any event always limited, regardless of the provisions in the previous subsection, to the net invoice amount (excl. VAT) of the year in which the damage occurred or from which it resulted. OutSmart's liability is furthermore limited to the amount which is paid out under the liability insurance in the matter concerned, regardless of how this liability originated.

3. OutSmart's liability for indirect damage, consequential damage, loss of profits, loss of turnover, lost savings, loss of goodwill, damage through business interruptions and damage relating to the use of objects, materials or software of third parties prescribed by the Client for OutSmart is excluded. In addition, OutSmart's liability shall also be excluded in case of mutilation, destruction or loss of data or documents.

4. The exclusions and restrictions on OutSmart's liability as described in the preceding provisions of this article, are entirely without prejudice to the other exclusions and restrictions on OutSmart's liability on the basis of these General Conditions.

5. The exclusions and restrictions referred to in article 21.1 to 21.4 lapse if and in so far as the damage is the result of deliberate intent or conscious recklessness on the part of the management of OutSmart. OutSmart is not liable for damage caused intentionally or by gross negligence of its employees/ or non-subordinates for whom it is liable pursuant to the law.

6. Unless performance by OutSmart is permanently impossible, OutSmart's liability due to an attributable failure to perform the Agreement only arises if the Client issues a written notice of default to OutSmart, whereby a reasonable term for remedying or removing that failure is stated, and OutSmart continues to fail attributable in performing its obligations even after that term. The notice of default should contain a full and as detailed a description of the failure as possible so that OutSmart is offered the opportunity to respond to it adequately.

7. A precondition for any right to compensation is that the Client must always inform OutSmart in writing of the damage as soon as possible after it has arisen, and in any case within two (2) months. Any claim to damages against OutSmart shall expire by the mere lapse of twelve (12) months after the claim arises.

8. The provisions of this article as well as all other restrictions on and exclusions of liability stated in these General Conditions, shall also apply to the benefit of all the persons including legal persons used by OutSmart to carry out the Agreement.

Article 22 Force Majeure

1. Neither Party is obliged to fulfil any obligation, including any warranty obligation agreed between the Parties, if fulfilment is hampered as a consequence of force majeure. Force majeure includes: (i) force majeure at OutSmart's suppliers, (ii) the improper fulfilment of obligations by suppliers the Client instructed OutSmart to use, (iii) any defective goods, equipment, software or materials of third parties the Client instructed OutSmart to use, (iv) government measures, (v) electricity failure, (vi) failure of the internet, computer network or telecommunication facilities, (vii) war, (viii) work occupation, (ix) strike, (x) general transport problems, and (xi) the unavailability of one or more employees.

2. If a situation of force majeure lasts longer than ninety (90) days, each Party has the right to terminate the Agreement in writing. Performances already delivered under the Agreement will in that case be settled proportionally, without the Parties otherwise owing each other anything.

Article 23 Additional work

1. If OutSmart has carried out work or other Services at the request of or with the prior agreement of the Client that is/are outside the content or the scope of the agreed Services, this work or these Services shall be paid for by the Client in accordance with the agreed rates and in the absence of such, in accordance with OutSmart's usual rates. OutSmart is not obliged to comply with such a request and may require a separate written agreement to be formed to that end.

2. The Client accepts that the extra work or Services referred to in this article may affect the agreed or anticipated time of completion of the work and the mutual responsibilities of the Client and OutSmart. The fact that additional work (or the demand for it) arises during the execution of the Agreement shall never be a ground for the Client to rescind or terminate the Agreement.

3. In so far as a fixed price has been agreed upon, OutSmart shall, upon request, inform the Client in writing about the financial consequences of the additional work or Services referred to in this article.

Article 24 Transfer of rights and obligations

1. The Client does not have the right to sell and/or transfer the rights and/or obligations under the Agreement to a third party.

2. OutSmart is authorised to transfer its claims to payment of remuneration to a third party.

Article 25 Applicable law and disputes

1. The Agreements between OutSmart and the Client are governed by Dutch law. The applicability of the Vienna Sales Convention, 1980 is excluded.

2. Any disputes arising from or related to these general conditions shall exclusively be submitted to the competent court of Amsterdam.



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Appendix 1 Processing Agreement

Article 1 Definitions

- a. “Processor”: means OutSmart if, when performing the obligations arising from the Agreement between the Client and OutSmart, OutSmart qualifies as a “Processor” under the GDPR.
- b. “Controller”: means the Client if, when performing the obligations arising from the Agreement with OutSmart, the Client qualifies as a “Controller” under the GDPR.
- c. “Data Subject”: has the definition as stipulated in the GDPR.
- d. “Personal Data”: has the definition as stipulated in the GDPR.
- e. “Processing of Personal Data.”: has the definition as stipulated in the GDPR.
- f. “Agreement”: the Agreement that comes into effect between the Client and OutSmart pursuant to the provisions of article 3 of the General Conditions.
- g. “Privacy Legislation”: the GDPR, the national applicable laws for implementing the GDPR and all laws and regulations that alter or supplement the preceding from time to time.

Article 2 General

1. Data processing. The Parties agree that the Processing of Personal Data by the Processor resulting from the performance of the Agreement between the Parties, will be carried out by OutSmart acting in the capacity of Processor and the Client as the Controller. The processing shall only take place based on the written instructions of the Controller unless: (i) an EU law or member state law provision applicable to the Processor obliges the Processor to process; in that event the Processor will notify the Controller of the legal provision prior to the processing, unless the law prohibits this notification for important public interest reasons; or (ii) the Controller has given additional instructions in writing to that end. This appendix (hereinafter referred to as: “the Processing Agreement”) shall specify the conditions which are applicable to the Processing of Personal Data by the Processor on behalf of the Controller pursuant to the Agreement.
2. Scope of application and purpose. The Processor shall receive the Personal Data of the Controller (such as contact details and possibly the location of clients, employees, contractors and/or hired-in workers of the Controller) and will store these temporarily to deliver Services to the Controller. The purpose of this Processing of Personal Data is to make sure that the Processor can provide the Services to the Controller.
3. Duration. This Processing Agreement shall remain in force during the term of the Agreement between the Parties and afterwards until the moment that any and all Processing of Personal Data by the Processor on behalf of the Controller has come to an end.
4. Upon termination of the processing. In principle the Processor shall delete all Personal Data and existing copies thereof within 3 months upon termination of the Processing of the Personal Data of the

Controller, or upon the earlier written request of the Controller. If, however, the Controller also wants the Personal Data to be returned or removed earlier, it shall notify the Controller of this explicitly and in writing within the above-mentioned period of 3 months.

5. General Conditions. The General Conditions of OutSmart are applicable to this Processing Agreement. Words, abbreviations and phrases bear the meaning as set out in article 1 of this Agreement or in article 1.3 of the General Conditions.

6. Provision. If any provision of this Processing Agreement is contrary to a provision of the General Conditions, the provision of the Processing Agreement shall prevail over the provision of the General Conditions.

Article 3 Duties of the Processor

1. The Parties agree that in the relationship between the Processor and the Controller and with a view to the protection of Personal Data, the clients of the Controller are actually the clients of the Controller and therefore not clients of the Processor. Furthermore, the Controller acknowledges that the Personal Data it provides to the Processor for the purpose of processing, are the property of the Controller and/or its clients. The Processor agrees to comply with the Privacy Legislation applicable to it in the Processing of Personal Data in the context of the Services. Upon Processing Personal Data on behalf of the Controller, the Processor shall:

- (i) guarantee that the Processing of Personal Data by the Processor is in accordance with the Privacy Legislation. This provision shall not in any way be construed as the Processor being obliged to comply with the Privacy Legislation which only applies to the Controller;
- (ii) not process Personal Data other than those which are reasonably necessary for the Processor to comply with its obligations to the Controller pursuant to the Agreement;
- (iii) ensure proper security within its own organisation with regard to confidentiality, integrity and accessibility of the Processing of Personal Data by means of planned systematic measures, in so far as this is necessary for the Processor to comply with the applicable legislation on data protection. In this context the Processor shall in any event ensure that the persons who are authorised to Process the Personal Data undertake to maintain confidentiality during and after their collaboration with the Controller (for example by means of a confidentiality agreement), in so far as this confidentiality has not yet been legally required;
- (iv) take technical and organisational measures – in accordance with the current state of the art – to ensure a security level in line with the risks and therefore comply with article 32 of the GDPR; (v) supply documentation about the Processor's security measures and routines upon the Controller's request, in so far as this information is required to comply with the obligations under the Privacy Legislation. The Processor shall comply with audits of the Controller and/or of the third party designated by the Controller;

(vi) register and report any deviations from the security measures and routines documented by the Processor, including but not limited to all reported and documented attempts at unauthorised access to the computer systems where Personal Data are processed all of which in so far as the Processor is aware of this and this is required within the scope of the Privacy Legislation;

(vii) provide the Controller with assistance in meeting certain requirements such as:

- upon the notification of Personal Data breaches (see also article 7 of this Processing Agreement);
- upon the performance of a Data Protection Impact Assessment (DPIA);
- in the event of a prior consultation in connection with a DPIA;

(viii) deleting data in accordance with reasonable guidelines of the Controller; and (ix) in the event that the Processor receives a request from a Data Subject with regard to one of the rights stipulated in chapter III of the GDPR (such as access, rectification, erasure etcetera) forward the request to the Controller. Subsequently the Controller shall process the request. The Processor may notify the Data Subject of this. The Processor shall assist the Controller (technically or organisationally) in processing such requests.

Article 4 Duties of the Controller

1. The Controller shall upon performing the Agreement and this Processing Agreement comply with the Privacy Legislation applicable to the Controller, including but not limited to ensuring there is a legal basis for Processing this Personal Data in the context of the Agreement and the Processing Agreement, obtaining all required consents (when required) and all other requirements for the Processing of Personal Data in the context of this Processing Agreement excluding the provisions that specifically identify the duties of the Processor. Following on from the above the Controller guarantees the Processor that the use and/or Processing of the Personal Data are not unlawful and do not infringe any rights of a third party. Naturally the Controller shall inform the Data Subjects (such as clients and employees) about the Processing of their Personal Data by the Processor (in the context of articles 13 and 14 GDPR).

Article 5 Sub-processor

1. The Controller grants the Processor permission to hire sub-processors. The Processor informs the Controller about the envisaged changes with regard to additions to or replacement of sub-processors. If the Processor uses a sub-processor it will ensure that each sub-processor adopts the obligations by which the Processor is bound pursuant to this Processing Agreement.

Article 6 Location of the data processing

1. Any and all Processing of Personal Data within the scope of this Agreement takes place in Switzerland, the European Union or the European Economic Area. The Processor shall not forward or transfer any Personal Data outside the region of Switzerland, the European Union and the European Economic Area

without the prior written consent of the Controller. Such transfer/ transmission must meet the requirements of the Privacy Legislation.

Article 7 Obligation to notify

1. In the event of a Personal Data breach as referred to in article 4, subsection 12 GDPR at the Processor, the Processor undertakes to notify the Controller of this as soon as possible. The Processor also undertakes to ensure that the information provided to the Controller is complete, correct, and accurate.

2. If the Privacy Legislation imposes such an obligation on the Processor, the Processor shall cooperate in informing the relevant authorities and/or Data Subjects of this.

3. The obligation to notify includes reporting the fact that a Personal Data breach has taken place, and:

- a summary of the breach (including the date and time, the estimated number of files, the estimated number of Data Subjects, type of incident, and known and/or expected consequences);
- the solution or proposed solution;
- the measures already taken.

Article 8 Indemnification

1. The Controller shall indemnify the Processor against all financial and other damages and costs the Processor incurs and which ensue directly or indirectly from a shortcoming by the Controller or a legal requirement for which the Controller (in the capacity of Controller) is responsible based on the Privacy Legislation.

2. If the Processor has compensated a Data Subject for any damage incurred under this Processing Agreement, the Processor is entitled to recover that part of the damage from the Controller which falls under the responsibility of the Controller pursuant to the Privacy Legislation and the Dutch Civil Code.

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