clicksmash

General terms & Conditions

Revision: October 2026

Article 1. Definitions

1. **ClickSmash**: ClickSmash B.V., having its registered office in the municipality of Bloemendaal, the Netherlands, registered with the Chamber of Commerce under number 93178085.
2. **Client**: the natural person acting in the exercise of a profession or business, or the legal entity, that enters into or wishes to enter into an Agreement with ClickSmash.
3. **Parties**: ClickSmash and the Client together; **Party**: each of them.
4. **General Terms and Conditions**: this document.
5. **Service**: the work and performance that ClickSmash carries out for the Client, as described in the Agreement.
6. **Continuing Agreement**: an Agreement for the periodic or ongoing provision of Services, such as hosting, SaaS, maintenance and the Service Package.
7. **Agreement**: the agreement between the Parties, including the accepted quotation and the documents referred to in Article 2(6).
8. **User**: a natural person who is given access to the Service by or on behalf of the Client, for example an employee.
9. **Application**: the website, web application, app or other software that ClickSmash develops, configures, hosts or maintains for the Client. The Application consists of Custom Work and may be built on ClickSmash Components and Third-Party Software.
10. **Custom Work**: the parts of the Application that ClickSmash develops specifically for the Client, such as own code, configuration, design and content structure.
11. **ClickSmash Components**: reusable software developed by and belonging to ClickSmash, such as modules, packages, templates, scripts and proprietary frameworks, which ClickSmash uses for multiple clients.
12. **Third-Party Software**: software whose rights are held by a third party and on which the Application is (partly) built or which it uses, such as frameworks, CMSs, plug-ins, libraries and external services, including open source software.
13. **Client Data**: all data, content and materials that the Client or Users store, enter or process through the Service, including personal data.
14. **Issue**: a detected or imminent disruption of the agreed level of the Service.
15. **In Writing**: on paper or by email, and electronic acceptance through a system of ClickSmash.
16. **Website**: www.clicksmash.com

Article 2. Applicability, offer and acceptance

1. These General Terms and Conditions apply to all quotations, offers and Agreements of ClickSmash. They are intended exclusively for business clients. ClickSmash does not enter into Agreements with consumers on the basis of these terms. ClickSmash makes these General Terms and Conditions available to the Client before or when the Agreement is concluded, as an appendix to the quotation or electronically in a way that allows the Client to store them.
2. ClickSmash prepares a quotation stating what the Service includes and what fee is payable. A quotation is valid for 30 days, unless it states otherwise. The Agreement is concluded as soon as the Client accepts the quotation In Writing or electronically, or as soon as ClickSmash starts performance with the Client's consent.
3. If the information provided by the Client for the quotation proves to be incorrect or incomplete, ClickSmash may reasonably adjust the price and schedule. ClickSmash will notify the Client of this in advance.
4. Purchasing or other terms and conditions of the Client do not apply, unless ClickSmash expressly accepts them In Writing.
5. Deviations from these General Terms and Conditions apply only if the Parties agree them In Writing, and only to the Agreement for which they were made.
6. In the event of a conflict between documents, the following order of precedence applies, with a higher document prevailing:
    1. an addendum later signed by both Parties, to the extent that it expressly amends a lower-ranking document;
    2. the Agreement or signed quotation;
    3. the data processing agreement, insofar as it concerns the processing of personal data;
    4. the Service Level Agreement (SLA), if agreed;
    5. these General Terms and Conditions;
    6. any supplementary terms and conditions.
7. If a provision is void or is annulled, the remaining provisions remain in force. The Parties will then replace the provision with a valid provision that comes as close as possible to the purpose of the original one.

Article 3. Performance of the Service

1. ClickSmash performs the Service to the best of its ability, with care and craftsmanship. Its obligation is a best-efforts obligation, unless a specific result has been expressly promised in the Agreement.
2. ClickSmash may have work carried out by third parties. ClickSmash remains responsible to the Client for the performance. Costs thereof are passed on only if agreed or as additional work in accordance with Article 5.
3. The Client provides in good time all information, access and cooperation that ClickSmash needs for the performance. ClickSmash indicates what it needs. If this is

not provided, ClickSmash may suspend performance and charge the additional costs at its usual rates.

Article 4. Delivery and acceptance

1. Stated deadlines are indicative, unless it has been agreed In Writing that a deadline is a strict (fatal) deadline. If a deadline is exceeded, the Parties will first consult each other.
2. ClickSmash is in default only after the Client has given it written notice of default, allowing a reasonable period for performance, and ClickSmash still fails to perform after that period.
3. A Service is deemed delivered as soon as ClickSmash reports that the Service or a phase of it is ready or available.
4. The Client tests the deliverables within 10 business days of delivery, or within the period stated in the Agreement. Rejection must be made In Writing, stating reasons, on the basis of the agreed specifications.
5. The deliverables are deemed accepted if:
    1. the Client does not reject them, stating reasons, within the period referred to in paragraph 4; or
    2. the Client puts them into production. Production use means any use with real users or real data outside the acceptance test, including an (internal) pilot or a phased go-live; in the case of a phased go-live, the part put into use is deemed accepted; or
    3. ClickSmash has remedied the reported defects.
6. Minor defects that do not materially impede use are not grounds for rejection. ClickSmash remedies them under the warranty in Article 12(7).

Article 5. Additional work

1. ClickSmash performs work outside the agreed scope (additional work) only at the Client's request or with the Client's prior written consent. ClickSmash is not obliged to accept additional work. Emergency measures are governed by Article 20(9).
2. ClickSmash reports the expected costs and the impact on the schedule in advance. Additional work is charged at ClickSmash's agreed rates, or otherwise its usual rates, on the basis of an estimate agreed in advance or on a time-and-materials basis.
3. If a fixed price has been agreed for the Service, ClickSmash informs the Client In Writing of the financial consequences before starting the additional work.
4. The need for additional work does not give the Client grounds to terminate or rescind the Agreement.

Article 6. Term and termination

1. A Continuing Agreement runs for the term stated in the Agreement or, failing that, for 12 months. The term starts on the date of delivery of the Service or, failing that, on the date on which the Agreement was concluded.
2. On expiry, a Continuing Agreement is tacitly renewed each time for 12 months, unless a Party terminates it In Writing with a notice period of 3 months before the end of the current period.
3. The Client's right to switch providers or transfer Client Data under Article 24 takes precedence over paragraphs 1 and 2, insofar as mandatory law so requires.
4. An Agreement for the development of software, advice or other one-off work ends on completion of the work. The Client may terminate such an Agreement before completion. In that case, the Client pays for the work performed up to that time, the costs incurred, and a fee of 30% of the remaining quoted amount as compensation for loss of profit and scheduling losses.
5. Either Party may rescind the Agreement if the other Party fails to perform a material obligation, after having been given written notice of default with a reasonable period of at least 14 days to remedy the failure, and the failure continues after that period.
6. Either Party may terminate the Agreement In Writing with immediate effect if the other Party applies for or is granted a suspension of payments, is declared bankrupt, or its business is dissolved or liquidated.
7. The Client remains liable for the fees for work performed by ClickSmash up to the end date, for costs incurred and for agreed fees up to the end date, even if these have not yet been invoiced. Provisions that by their nature continue, such as confidentiality, intellectual property, liability and exit, remain in force after termination.
8. **Discontinuation of a service (end-of-service).** ClickSmash may terminate a Service that it discontinues for all its clients, also during a current term, by giving at least 6 months' written notice. ClickSmash will propose a migration to a comparable service of ClickSmash or to another provider, and will refund prepaid fees relating to the period after the end date. Article 24 applies. The Client is not entitled to compensation for such termination.

Article 7. Prices

1. All prices are in euros and exclusive of VAT and other government levies.
2. Obvious errors in prices on the Website or in other communications do not bind ClickSmash.
3. ClickSmash may increase the prices of a Continuing Agreement once per calendar year as of 1 January by the higher of the following percentages: the annual change in the CBS (Statistics Netherlands) Consumer Price Index (CPI, all spending) for the month of October of the preceding year, or the most recent annual change in the CBS Services Producer Price Index (DPI) for IT services published before 1 December. The Client may not terminate the Agreement on that ground. In addition, ClickSmash may adjust its hourly rates, including the standard hourly rate and the rates for additional work, as of 1 January. It announces the new rates at least 1 month in advance. Fixed prices in current Agreements remain unchanged, unless performance extends beyond the agreed end date into the new year due to the

Client's actions or delays; in that case ClickSmash may apply the indexation to the work after 1 January.

4. ClickSmash announces any further price change In Writing at least 2 months in advance. The Client may then terminate the Agreement In Writing with effect from the date on which the change takes effect.
5. ClickSmash may pass on price increases by its suppliers, such as licence, hosting and domain costs, with effect from the next invoicing period. It will notify the Client of this in advance.

Article 8. Payment

1. ClickSmash invoices electronically. The Client consents to this.
2. Fees for a Continuing Agreement are invoiced in advance for each agreed period. Project work is invoiced in accordance with the payment schedule in the Agreement or, failing that, monthly in arrears.
3. The payment term is 30 days from the invoice date, unless otherwise agreed. ClickSmash may require payment by direct debit. The Client will then grant a direct debit mandate.
4. If the Client fails to pay on time, it is in default without notice of default being required. Statutory commercial interest (Section 6:119a of the Dutch Civil Code) is then payable on the outstanding amount.
5. In the event of late payment, the Client owes a fixed compensation of € 40 without a reminder being required. After a written reminder with a payment term of 14 days, the Client instead owes extrajudicial collection costs of 15% of the outstanding amount, with a minimum of € 250.
6. If an invoice is not paid on time, ClickSmash may immediately postpone the start of new work and additional work for the Client until payment is made. If payment is still not made after the reminder, ClickSmash may suspend performance of the Agreement and of other Agreements with the Client. ClickSmash will announce this In Writing at least 7 days in advance. During a suspension, Client Data is retained; ClickSmash will not delete anything on the basis of this paragraph.
7. In the event of bankruptcy, suspension of payments, attachment of a substantial part of the assets, dissolution or liquidation of the Client, all claims of ClickSmash become immediately due and payable.
8. If ClickSmash has reasonable grounds to doubt the Client's ability to pay, it may require security or advance payment up to the amount that the Client can reasonably be expected to owe over 6 months.
9. The Client must raise any objection to an invoice In Writing, stating reasons, within 30 days of the invoice date. An objection does not suspend payment of the undisputed part.

Article 9. Intellectual property

1. All intellectual property rights in ClickSmash Components, in Custom Work and in advice, documentation and other materials developed by ClickSmash are vested in

ClickSmash. Rights can only be transferred to the Client by a written deed signed by both Parties, and such transfer then applies only to the works named in it.

2. The rights in Third-Party Software remain with those third parties. The licence terms of the relevant third party apply to its use, even if ClickSmash installs or manages the software for the Client. ClickSmash grants no rights in it beyond those it has itself obtained from the third party. Costs of paid licences are borne by the Client, unless included in the price. ClickSmash states in the quotation or on delivery which Third-Party Software is subject to a paid licence, in whose name that licence is held and what happens to it on termination.
3. The Client retains all rights in Client Data and in materials that the Client supplies or creates itself, such as texts, images, logos and house style. ClickSmash acquires no rights in these, except the right of use referred to in Article 16(9).
4. The quotation states whether the Application is delivered as transferable custom work (model A) or as a hosted service (model B). Model A applies only if expressly stated in the quotation or the Agreement; in all other cases model B applies. Under model A, the Client obtains, upon full payment, a perpetual, non-exclusive right to use the Custom Work and the ClickSmash Components incorporated in the Application. The right to those ClickSmash Components applies exclusively to the use, management and modification of this Application; the Client may not use them separately, incorporate them into other software or make them available to third parties on their own. The right of use applies within the Client's own organisation and its affiliated companies, survives termination of the Agreement, includes the right to have the Application hosted, maintained and modified by a third party, and passes to a legal successor that takes over the Application.
5. Under model B, the Client obtains a non-exclusive, non-transferable right to use the Application, the Custom Work and the ClickSmash Components for as long as the Service runs. On termination, the Client takes its Client Data with it, together with the settings and content structure it has entered itself insofar as these are technically exportable, in accordance with Article 24. Exactly which data and configuration this includes is stated in the quotation or the service description. If the Client wishes to continue using the Application itself or with a third party after termination, it may obtain a licence for that purpose on the terms then applicable.
6. The Client will not remove or alter any notices of copyright, trademarks, trade names or confidentiality, and will not circumvent any technical protection of the works.
7. If the Client uses ClickSmash Components or Custom Work beyond the limits of the rights of use granted, it forfeits an immediately payable penalty of € 10,000 per infringement, plus € 2,500 for each day that the infringement continues after a written demand. The penalty is without prejudice to ClickSmash's right to full compensation and to take other measures.
8. ClickSmash indemnifies the Client against third-party claims alleging that ClickSmash Components or Custom Work infringe their intellectual property rights. The Client reports any such claim immediately, leaves the defence to ClickSmash and cooperates in it. This indemnity does not apply to Third-Party Software, to materials of the Client, or to modifications not made by ClickSmash. The obligations under this paragraph are subject to the limitations and maximum amounts of Article 10.

Article 10. Liability

1. The total liability of ClickSmash for an attributable failure, a tort or on any other ground whatsoever is limited to compensation for direct damage, up to a maximum of:
    1. for a Continuing Agreement: the fees (excluding VAT) payable by the Client for the relevant Service over the 12 months preceding the event causing the damage or, if the Service has not yet been running for 12 months at that time, the fees payable for the first 12 months;
    2. for other Agreements: the agreed price (excluding VAT) of that Agreement.
2. The total liability shall in no event exceed € 250,000 per event and € 250,000 per calendar year. A series of related events counts as one event.
3. Direct damage means exclusively:
    1. material damage to property;
    2. reasonable costs of bringing ClickSmash's performance into conformity with the Agreement;
    3. reasonable costs of determining the cause and extent of the damage and of preventing or limiting damage;
    4. reasonable costs of restoring lost or damaged Client Data from the most recent available backup, if ClickSmash is responsible for backups under the Agreement.
4. Liability for indirect damage, including consequential loss, loss of profit, lost savings, reputational damage and damage due to business interruption, is excluded.
5. The limitations in this article do not apply if the damage results from intent or deliberate recklessness on the part of ClickSmash's management. For damage resulting from death or personal injury, a maximum of € 1,250,000 per event and € 2,500,000 per calendar year applies instead of paragraphs 1 and 2.
6. Liability for an attributable failure arises only after the Client has promptly given ClickSmash a detailed written notice of default with a reasonable period for remedy, and ClickSmash continues to fail after that period. A notice of default is not required if performance is permanently impossible.
7. The Client must report damage to ClickSmash In Writing as soon as possible and no later than 3 months after it discovered or could reasonably have discovered it. Every legal claim for damages lapses 24 months after the claim arose.
8. The Client indemnifies ClickSmash against claims by third parties, including Users, arising from Client Data, from use of the Service in breach of the Agreement or the law, or from products that the Client supplies to third parties using the Service, unless the damage results from a failure by ClickSmash.
9. **Concurrence.** The maximum amounts in these General Terms and Conditions are not cumulative. For all claims of the Client together, on whatever ground, including the Agreement, an indemnity, the data processing agreement, the SLA and tort, the maximum per calendar year is the amount in paragraph 2. Lower maximum amounts, such as that in Article 21(5) (security incidents), continue to apply within it. For damage resulting from death or personal injury, only paragraph 5 applies.

Article 11. Force majeure

1. A Party is not obliged to perform an obligation if it is prevented from doing so by force majeure. Force majeure also includes:
    1. war, civil unrest, terrorism, pandemics, natural disasters, fire and flooding;
    2. government measures;
    3. power and network failures outside ClickSmash's sphere of control;
    4. DDoS attacks and other cyberattacks despite the measures in Article 21(1), including attacks exploiting vulnerabilities for which no update or adequate measure was available at the time of the attack (zero-days) or which ClickSmash could not reasonably yet apply after publication, also where such attacks are discovered, carried out or scaled up using artificial intelligence (AI);
    5. failures by suppliers that ClickSmash selected with care, where ClickSmash could not reasonably engage an alternative.
2. Force majeure does not include staff shortages, liquidity problems and failures in ClickSmash's own systems that it could have prevented by appropriate measures. An attack exploiting a known vulnerability does constitute force majeure for as long as the period for applying the relevant update is still running. That period is the period stated in the SLA or, if the SLA does not regulate it or there is no SLA, a reasonable period after the update became available, taking into account the severity of the vulnerability and the time needed to test and install the update safely.
3. During force majeure, obligations are suspended. If the force majeure lasts longer than 60 days, either Party may rescind the Agreement In Writing without any obligation to pay compensation. Performance already delivered is settled proportionally.

Article 12. Software development

1. The Parties record In Writing which Application ClickSmash develops, with what functionality and in what manner. ClickSmash develops on the basis of the information and specifications provided by the Client. The Client warrants the accuracy and completeness thereof.
2. ClickSmash may check the information provided. If it proves incomplete or inconsistent, ClickSmash will report this and may suspend the work until the Client has remedied the shortcomings.
3. ClickSmash itself chooses the ClickSmash Components and Third-Party Software, including open source frameworks and CMSs, on which it builds the Application, unless the Parties agree otherwise. ClickSmash selects Third-Party Software with care, ensures that its use complies with the licences and informs the Client of licence terms relevant to its use. The Client complies with those terms.
4. ClickSmash does not warrant the operation, availability or continuity of Third-Party Software. In the event of a defect in it, ClickSmash will make reasonable efforts to report it to the supplier and, where possible, to provide a temporary solution.

5. Under model A (Article 9(4)), ClickSmash supplies the ClickSmash Components in the form needed to install, run and maintain the Application, subject to the restrictions on use in that paragraph. Under model B, the source code of ClickSmash Components is not provided, unless agreed otherwise In Writing. The Client will not use source code of ClickSmash Components beyond the rights of use granted and will not attempt to obtain source code that has not been provided, except insofar as mandatory law permits. The source code of open source software is available under the relevant licence.
6. Under model A, ClickSmash provides the Client, upon full payment and on request, with the source code and technical documentation of the Custom Work, together with the installation and management instructions that a successor administrator needs, in their then current state. This may also take place on termination in accordance with Article 24.
7. For 30 days after acceptance (the warranty period), ClickSmash remedies free of charge reproducible errors in the Custom Work that deviate from the agreed specifications. Modifications required due to new versions of browsers, operating systems or Third-Party Software, or due to changes in integrations, are not errors within the meaning of this paragraph. This warranty does not apply to errors in Third-Party Software and lapses to the extent that the Client or a third party has modified the Application without ClickSmash's consent. After the warranty period, remedying errors is paid maintenance under Article 13.
8. Use of the Application by Users is the responsibility of the Client.

Article 13. Software maintenance

1. This article applies if the Service (also) consists of maintenance of the Application. Maintenance is never free of charge: it is paid for through a maintenance agreement, the Service Package or as additional work. Only the remedying of errors within the warranty period of Article 12(7) is free of charge.
2. Maintenance includes:
    1. remedying reproducible errors in the Custom Work reported by the Client;
    2. installing security updates and minor updates (minor and patch versions) of ClickSmash Components and Third-Party Software.
3. The following work is not included in maintenance, unless the Agreement provides otherwise. ClickSmash performs it as additional work or charged to the Service Package, after consultation with the Client:
    1. upgrades to a new major version of Third-Party Software, such as a framework, CMS or PHP version, and the modifications to the Custom Work required for this;
    2. modifications required by changes in legislation;
    3. modifications to integrations with software or systems of third parties;
    4. new functionality;
    5. repair of damage to the Application or data not attributable to ClickSmash.
4. **Allocation of responsibilities.** ClickSmash is responsible for the operating system and server software of its infrastructure and for making supported PHP and other

runtime versions available. The Client is responsible for everything else, such as the Application, the framework or CMS, plug-ins, integrations and making the Application compatible with new versions, unless the Agreement, a maintenance agreement, the Service Package or an SLA provides otherwise. ClickSmash performs work that falls to the Client only on instruction, as additional work or charged to the Service Package, or as an emergency measure under Article 20(9).

Article 14. ClickSmash Service Package and SLA

1. The Service Package is a prepaid bundle of hours for maintenance and minor modifications. Its scope, price and term are set out in the Agreement. ClickSmash invoices the Service Package in advance.
2. Work within the Service Package is given priority in scheduling. ClickSmash aims to respond to a report within 2 business days, unless an SLA sets other response times.
3. ClickSmash keeps time records, rounded to the nearest quarter of an hour. The Client may inspect them on request. The time records serve as evidence, subject to proof to the contrary.
4. ClickSmash may group related Issues into a Milestone and submits the estimated hours for approval in advance. After approval, ClickSmash may charge up to 10% more hours than approved. Further hours require new approval.
5. To determine the cause of an Issue, ClickSmash may charge up to 2 hours of investigation time to the Service Package. If more time is needed, ClickSmash will first request approval. This does not apply to emergency work under Article 20(9).
6. Hours in excess of the Service Package are invoiced on a time-and-materials basis at the standard hourly rate after prior approval. These hours do not receive priority in scheduling.
7. Unused hours expire at the end of the period for which they were purchased and are not refunded on termination, unless the Agreement provides otherwise.
8. Development of new applications or software is not covered by the Service Package.
9. **Relationship between Service Package and SLA.** An SLA is a supplementary arrangement alongside the Service and the Service Package. An SLA governs service levels and service credits, not hours. Restoring failures in ClickSmash's infrastructure is covered by the SLA fee; work on the Application is charged to the Service Package or invoiced as additional work. Without an SLA, no service levels and no service credits apply.
10. **SLA.** An SLA applies only if the Parties have agreed it In Writing, against the fee stated in it. The SLA sets out the service levels, such as availability, response times, restoration times, service hours and patch periods.
11. Availability is measured per calendar month using ClickSmash's monitoring, at the endpoint specified in the SLA. ClickSmash's measurement data is decisive, subject to proof to the contrary by the Client. The following are disregarded in the calculation:
    1. planned and urgent maintenance under Article 20(2);
    2. force majeure;
    3. failures caused by the Client, Users or software that the Client manages itself or has installed;

    4. failures in third-party networks (Article 19(3));
    5. suspension or restriction of the Service under Article 8(6) or Article 16(5).
12. Response and restoration times apply only within the service hours stated in the SLA. Outside service hours they apply only if support outside office hours has been agreed.
13. If ClickSmash fails to meet a service level, the Client is entitled to the service credit stated in the SLA. Service credits per calendar month together amount to no more than 50% of the monthly fee for the relevant Service. The Client must request a service credit In Writing within 30 days after the end of the month. ClickSmash sets it off against the next invoice. Service credits are not paid out; on termination, outstanding service credits are set off against the final invoice.
14. Service credits are the sole and exclusive remedy for failure to meet service levels. The Client has no further right to damages or rescission for failure to meet service levels, except in the case of intent or deliberate recklessness on the part of ClickSmash's management.
15. If ClickSmash fails to meet the availability level in three consecutive calendar months, the Client may terminate the SLA and the Service to which it relates In Writing with effect from the following month.

Article 15. Domain names and IP addresses

1. This article applies if ClickSmash acts as intermediary for the Client in applying for or managing a domain name or IP address.
2. Application, allocation and use are subject to the rules of the registration authorities, such as SIDN and RIPE NCC. ClickSmash acts only as intermediary and does not guarantee that an application will be granted. The Client complies with the rules of those authorities.
3. Registration is only final after confirmation by email from ClickSmash. An invoice is not a confirmation.
4. Domain names are registered in the name of the Client as registrant by default. If the Client is the registrant, ClickSmash provides the transfer code (token) at the Client's request in accordance with the rules of the registration authority. If ClickSmash exceptionally registers a domain name in its own name on behalf of the Client, it transfers that domain name after termination to the Client or a party designated by the Client, once all invoices due have been paid.
5. The Client is responsible for the choice and use of a domain name and indemnifies ClickSmash against third-party claims in that respect.
6. ClickSmash is not liable for the loss of a domain name or for its registration by a third party, except in the case of intent or gross negligence on the part of ClickSmash.
7. If, after written notice of default with a reasonable period, the Client remains in default of payment, ClickSmash may suspend its own services for the domain name, such as DNS and forwarding, for as long as the default continues. ClickSmash will not block the transfer of the domain name. After rescission for breach of contract, ClickSmash may let the registration lapse, after having given the Client at least 30 days to transfer the domain name.

Article 16. Hosting and related services

1. This article applies if the Service (also) consists of hosting, storage or transmission of data, email, or making material available to third parties.
2. The Client and Users do not store or distribute through the Service any material that violates the law or the rights of third parties. They do not send unsolicited commercial communications and do not distribute viruses or other malicious software.
3. Anyone can report through the reporting address on the Website that material is unlawful. ClickSmash confirms receipt of a report electronically, assesses it carefully and in a timely manner, and informs the reporter of its decision. If, in ClickSmash's reasonable opinion, the material is manifestly unlawful, it may disable access to it. ClickSmash informs the Client in advance and gives the Client the opportunity to respond. In urgent cases, such as malware, phishing, child sexual abuse material or an acute danger to systems or third parties, ClickSmash may intervene immediately and informs the Client immediately afterwards. ClickSmash gives reasons for its decision in accordance with the Digital Services Act (Regulation (EU) 2022/2065). The Client may object to the decision with ClickSmash.
4. ClickSmash discloses data of the Client or Users to third parties only if it is legally obliged to do so or has received a court order, or if the criteria established in case law for disclosure to a reporting party are met. ClickSmash may report a suspected criminal offence to the authorities.
5. The Client does not hinder other clients or internet users and does not cause damage to ClickSmash's systems. If the Client creates a danger to the systems or network of ClickSmash or third parties, ClickSmash may take the measures reasonably necessary to avert that danger. ClickSmash informs the Client of this.
6. ClickSmash may set reasonable limits on storage, computing capacity and data traffic, as stated in the Agreement. If these are exceeded, ClickSmash notifies the Client and may charge the additional costs in accordance with the Agreement. In the event of continued excess, ClickSmash may restrict the Service after consulting the Client.
7. Usernames and passwords are confidential and personal. The Client is responsible for their use and for the actions of Users. The Client reports any suspected misuse immediately.
8. The Client is responsible for equipment and software running outside ClickSmash's sphere of control.
9. The Client grants ClickSmash the right to store, copy and transmit Client Data, solely insofar as necessary for the performance of the Agreement.

Article 17. SaaS services

1. This article applies if the Service (also) consists of Software as a Service (SaaS).
2. The Client itself determines the content of the Client Data and of what it publishes using the Service, and is responsible for it. Article 16(2) to (5) applies accordingly.

3. The Client uses the Service for its own business and that of its affiliated companies, and not to give third parties access against payment, unless agreed otherwise In Writing.
4. The Client may add Users. For a new User, the fee set out in the Agreement is payable from the first day of the following month for the remainder of the current contract period.
5. The Client will not give the impression that it is a partner of ClickSmash, unless ClickSmash has given written permission.
6. ClickSmash may adjust the functionality of the Service to improve it or fix errors. ClickSmash announces any material reduction in functionality at least 2 months in advance. The Client may then terminate the Agreement with effect from the date on which the change takes effect.

Article 18. Advice and consultancy

1. This article applies if the Service (also) consists of advice, consultancy, audits, or architecture or design work in the field of software, AI, networks, infrastructure or information security (Advice).
2. ClickSmash advises to the best of its ability, on the basis of the information provided by the Client and the state of the art at the time of advising. ClickSmash does not guarantee that the Advice will achieve the result intended by the Client.
3. The Client itself decides whether and how to follow the Advice and is responsible for the consequences. If the Client or a third party implements the Advice, ClickSmash is not responsible for that implementation or for the products and services of that third party, such as hardware, network equipment and cloud and AI services.
4. Advice reflects the situation on its date. ClickSmash is not obliged to update the Advice following later developments, unless agreed. The Client acknowledges that developments in AI and information security move quickly and that Advice may therefore become outdated quickly.
5. Advice on regulation, such as the GDPR, the AI Act or the Dutch Cybersecurity Act, is technical in nature and does not constitute legal advice. The Client has legal questions assessed by a lawyer.
6. If ClickSmash advises on the use of AI, the Client remains responsible for the choice, use and control of AI systems and their outputs. The Client acknowledges that outputs of AI systems may be incorrect or unpredictable.
7. The Advice is intended exclusively for the Client. Third parties cannot derive any rights from it. The Client will not provide the Advice to third parties or make it public without ClickSmash's written consent, except to its own advisers, accountants and regulators.
8. Without prejudice to Article 9(1), after payment the Client obtains the right to use and reproduce the Advice and reports without restriction within its own organisation.
9. Advice is deemed delivered when sent to the Client. The Client reports any comments within 10 business days. Thereafter the Advice is deemed accepted.

10. Advice is invoiced on a time-and-materials basis at the agreed rates, unless a fixed price has been agreed. An estimate of hours is indicative. Travel time and travel expenses are invoiced in accordance with the Agreement.
11. ClickSmash performs network scans, penetration tests and audits only in consultation with the Client and on the basis of a written assignment setting out the scope, the systems to be tested and the time window. In that case:
    1. the Client warrants that it is authorised to give permission for testing all systems named, including where they are hosted by a third party, and informs those third parties in advance where necessary;
    2. the Client indemnifies ClickSmash against third-party claims if such authorisation is lacking;
    3. the Client ensures up-to-date backups of the systems tested beforehand;
    4. ClickSmash is not liable for disruption, downtime or data loss caused by the test despite careful performance;
    5. a test is a snapshot and does not guarantee that all vulnerabilities have been found;
    6. the findings are confidential within the meaning of Article 25.

Article 19. Availability

1. ClickSmash makes reasonable efforts to keep its systems, networks and the Service available as continuously as possible. A guaranteed availability percentage applies only if agreed in an SLA.
2. ClickSmash keeps the operating system and server software of its infrastructure up to date and installs security updates for them within a reasonable period. It may postpone or skip an update if, in its reasonable opinion, the update would endanger the operation of the Service, and will then take other appropriate measures where necessary. Updates of the Application, frameworks, CMSs, plug-ins and integrations are not covered by this paragraph; Article 13 applies to them.
3. ClickSmash depends on third parties for the availability of their networks, such as the internet, and does not guarantee that availability.

Article 20. Incidents, maintenance and backup

1. In the event of an incident, ClickSmash informs the Client as soon as possible of its nature and expected duration.
2. ClickSmash may temporarily take its systems out of service for maintenance. Planned maintenance takes place outside office hours as far as possible and is announced by ClickSmash at least 2 business days in advance. Urgent maintenance of ClickSmash's infrastructure, such as closing a security vulnerability in server software, may take place without notice. Intervention in the Application is governed by paragraph 9.
3. ClickSmash may modify ClickSmash Components to improve functionality or fix errors. Because these components are used for multiple clients, ClickSmash cannot

refrain from a modification for a single Client. ClickSmash announces in advance any modification that materially changes the operation of the Application.

4. If, as a result of a modification of ClickSmash Components, the Application no longer works with them, ClickSmash restores compatibility. The hours for this are charged to the Service Package or invoiced as additional work.
5. Suppliers of Third-Party Software may change their software or end support for a version (end-of-life). ClickSmash reports this as early as possible and proposes an upgrade. That upgrade falls under Article 13(3). ClickSmash may phase out parts of ClickSmash Components; it gives at least 6 months' notice and discusses a migration path.
6. If the Client refuses a necessary upgrade, or wishes to keep the Application running on outdated software, the Parties record In Writing: (a) which upgrade ClickSmash has advised; (b) which temporary measures apply, such as isolation, additional shielding or restricted access, and their cost; and (c) until which date ClickSmash supports this set-up. Until this has been recorded, ClickSmash supports the set-up for no more than 3 months after its advice. ClickSmash is not liable for the consequences of the refused upgrade for the security and operation of the Application. After the agreed date, or earlier if the outdated software endangers the systems of ClickSmash or other clients, ClickSmash may take measures under Article 16(5), or terminate the hosting of the Application with at least 30 days' notice.
7. ClickSmash makes backups of Client Data if agreed, at the frequency and with the retention period set out in the Agreement or SLA. ClickSmash periodically tests whether backups can be restored. A restore at the Client's request is invoiced as additional work, unless it is necessary due to a failure by ClickSmash.
8. If no backup has been agreed, the Client itself is responsible for backups of Client Data.
9. **Emergency measures.** In the event of an acute security risk to the Application, such as an actively exploited vulnerability or a (suspected) intrusion, ClickSmash first tries to reach the Client's contact person. If this is not possible in time, ClickSmash may, without prior consent and by way of derogation from Article 5(1) and (2) and Article 14(5):
    1. temporarily isolate the Application or part of it, or take it offline;
    2. apply a temporary workaround or install a security update;
    3. perform no more than 2 hours of emergency work per incident.
10. **End of and accounting for emergency measures.** The mandate under paragraph 9 ends as soon as the immediate danger has been averted. ClickSmash performs further work only with the Client's consent. ClickSmash reports to the Client no later than the next business day what it has done, which hours fall under the Agreement, the SLA or the Service Package, and which are invoiced as emergency work. Emergency work on components that are ClickSmash's responsibility under Article 13(4) is covered by the fee for that Service.

Article 21. Information security

1. **Baseline security.** This is a best-efforts obligation: ClickSmash does not guarantee that the Service is free of vulnerabilities or that intrusions will be prevented. The Client acknowledges that attack techniques change rapidly, partly due to AI, and that no measure offers complete protection. ClickSmash takes the following measures for the infrastructure under its management:
    1. installing security updates of operating system and server software within a reasonable period;
    2. a firewall and encrypted connections (TLS);
    3. access management for its own staff, with multi-factor authentication (MFA) where necessary in view of the Application.
2. **Additional security.** ClickSmash provides measures beyond baseline security only if agreed in an SLA. These include, for example, 24/7 monitoring, a web application firewall, malware scans, penetration tests, DDoS mitigation, guaranteed restoration times and incident response. Updates of the Application itself fall under Article 13.
3. **Client's responsibilities.** The Client is responsible for:
    1. the security of its own accounts, passwords and equipment;
    2. using MFA where ClickSmash offers it;
    3. the actions of Users;
    4. software that it installs or has installed itself;
    5. the consequences of a refused upgrade (Article 20(6));
    6. insuring its own losses from security incidents, in accordance with paragraph 8.
4. **Notification.** ClickSmash notifies a security incident that affects or may affect Client Data or the Service without undue delay after becoming aware of it, to the contact person designated by the Client in the data processing agreement or quotation. ClickSmash provides the information the Client needs to make a notification within 72 hours, and keeps the Client informed of the measures taken until the incident has been resolved. Notification to the Dutch Data Protection Authority and to data subjects is made by the controller; ClickSmash makes such notifications only on the Client's instruction or if the law requires it to do so. The Client keeps the contact details up to date.
5. **Liability for security incidents.** ClickSmash is not liable for damage caused by a security incident, such as a hack, malware, ransomware, a DDoS attack, a data breach or other unauthorised access by third parties. This does not apply if the Client proves that the incident resulted from failure to take the measures in paragraph 1 or in the SLA. In that case, ClickSmash's liability is limited, by way of derogation from Article 10(1) and (2), to the lowest of the following amounts: € 50,000; or, for a Continuing Agreement, the fees (excluding VAT) payable by the Client for the relevant Service over the 12 months preceding the incident (or, if the Service has not yet been running for 12 months, the fees payable for the first 12 months); or, for other Agreements, the agreed project price (excluding VAT). This maximum applies per incident and per calendar year combined. In all other respects Article 10 continues to apply. ClickSmash shall in no event compensate:
    1. ransom payments;
    2. fines imposed on the Client;

    3. reputational damage;
    4. costs of notifications to data subjects.
6. **Costs of an incident.** Investigation and recovery after a security incident are invoiced as additional work, unless the incident results from an attributable failure by ClickSmash in the performance of the Agreement, the data processing agreement or the SLA, or the SLA provides otherwise.
7. Article 10(5) (intent and deliberate recklessness) continues to apply in full.
8. **Insurance.** The Client is itself responsible for insuring its own losses from security incidents, such as business interruption and recovery, investigation and notification costs. ClickSmash recommends that the Client take out cyber insurance. To the extent that the Client receives compensation for damage from an insurer, it cannot also recover that damage from ClickSmash. The Client makes reasonable efforts to agree with its insurer that the insurer will not take recourse against ClickSmash, insofar as its policy permits. ClickSmash may require cyber insurance with a waiver of recourse in an SLA or quotation; the Client then provides a copy of the policy schedule on request.

Article 22. Personal data

1. This article applies if ClickSmash processes personal data on behalf of the Client in the performance of the Agreement.
2. In that context, the Client is the controller and ClickSmash the processor within the meaning of the General Data Protection Regulation (GDPR). If the Client itself processes the personal data as a processor for a third party, for example as a supplier in the healthcare chain, ClickSmash is a sub-processor. In that case, the Client warrants that the controller has given written consent to the engagement of ClickSmash, and passes on the controller's instructions and requirements to ClickSmash.
3. The Parties enter into a data processing agreement that complies with Article 28 GDPR. ClickSmash attaches its standard data processing agreement to the quotation. By accepting the quotation, the Client also accepts that data processing agreement, unless the Parties conclude a different data processing agreement In Writing; electronic acceptance suffices. ClickSmash is given access to personal data only after a data processing agreement has been accepted, including for an initial migration or a support investigation. With regard to the processing of personal data, the data processing agreement prevails over these General Terms and Conditions (Article 2(6)).
4. The Client warrants that it has a lawful basis for the processing and that the content, use and processing of personal data are not unlawful. The Client indemnifies ClickSmash against claims by third parties, including regulators, arising from a breach of the GDPR by the Client.
5. ClickSmash's liability for damage caused by a breach of the GDPR or of the data processing agreement is limited in accordance with Article 10 and, in the case of a security incident such as a data breach, in accordance with Article 21(5) (liability for

security incidents). This also applies if the data processing agreement contains no limitation of its own.
6. For personal data that ClickSmash processes for its own purposes, such as contact and billing details, ClickSmash refers to its privacy statement on the Website.

Article 23. Use of AI

1. ClickSmash may use AI tools in the performance of the Agreement, such as tools for writing and reviewing code. ClickSmash remains responsible for the result and reviews the output before delivering it.
2. ClickSmash itself determines which AI tools it uses. For confidential information of the Client, such as Client Data, source code, support tickets and log files, it uses only tools whose provider does not use that information to train its models and offers appropriate confidentiality and security. For personal data, Article 22 and the data processing agreement also apply.
3. Article 9 applies to results created with the help of AI in the same way as to other work of ClickSmash. ClickSmash does not guarantee that such results are protected by copyright.
4. If the Application contains AI functionality, the Parties record for each application which role each of them has under the AI Act (Regulation (EU) 2024/1689), such as provider or deployer. If this has not been recorded, the Client is the deployer of AI functionality that it uses under its own authority. In that role, the Client is responsible for the purpose for which it uses the functionality, for human oversight, for transparency towards Users and data subjects, and for decisions it takes on the basis of AI outputs.
5. AI models and AI services of third parties qualify as Third-Party Software. Usage and API costs thereof are borne by the Client, unless included in the price.
6. The Client may request In Writing that ClickSmash not use AI tools for its assignment. ClickSmash may then reasonably adjust the price and schedule.

Article 24. Exit, switching and return of data

1. **Export set.** On termination of a Continuing Agreement, for whatever reason, ClickSmash makes the export set available at the Client's request. Insofar as applicable to the Service, it consists of an export of the databases, the uploaded files and media, the mailboxes, the DNS zone, and the configuration and metadata the Client needs to run the Application elsewhere. ClickSmash's internal server and security configuration is not included. ClickSmash supplies the export set in common, open formats, such as SQL, CSV or JSON, the original file formats, and mbox or IMAP. The quotation or service description may further specify the export set per Service.
2. **Retrieval period.** The Client may request and retrieve the export set until at least 30 days after the end date. In the case of switching under paragraph 3, that period runs until at least 30 calendar days after the end of the transition period.

3. **Switching.** Insofar as the Data Act (Regulation (EU) 2023/2854) applies to the Service, the following also applies:
    1. the Client may request to switch to another provider or to its own infrastructure with a notice period of no more than 2 months;
    2. ClickSmash supports the switch during a transition period of no more than 30 days, which may be extended at the Client's request;
    3. the Agreement ends upon successful completion of the switch.
4. **Termination without switching.** The Client may also request termination with complete deletion of the Client Data, without switching. ClickSmash then deletes the Client Data in accordance with paragraph 6 and confirms the deletion In Writing.
5. **Costs.** The Client pays for the Service until the end of the transition period. For the export set and the switching support required by law, ClickSmash charges only the costs permitted by the Data Act; from 12 January 2027 these are free of charge insofar as Article 29 of that Regulation applies. Support beyond this, such as migration work on Custom Work or setting up the Application with a new provider, is additional work that ClickSmash may invoice in advance.
6. **Deletion.** After the retrieval period has ended, ClickSmash deletes the Client Data from its production systems within 30 days. Backups are overwritten through the regular rotation, no later than within 90 days. This does not apply insofar as a statutory retention obligation applies or the data processing agreement provides otherwise. On request, ClickSmash confirms the deletion In Writing.
7. **Payment.** ClickSmash does not make the provision of Client Data, the deletion, or the transfer code of domain names registered in the Client's name conditional on payment of outstanding invoices. ClickSmash may, however, suspend the following until all amounts due have been paid or adequate security has been provided: the source code and documentation of the Custom Work, scripts and configuration created by ClickSmash that do not constitute Client Data, the transfer of domain names registered in ClickSmash's name, and support beyond what is required by law. This applies insofar as mandatory law, including the GDPR and the Data Act, does not preclude it.
8. **Domain names and source code.** On request, ClickSmash cooperates in the transfer of domain names in accordance with Article 15(4). Under model A (Article 9(4)), it provides the source code of the Custom Work in accordance with Article 12(6).

Article 25. Confidentiality

1. The Parties keep information of the other Party confidential if it has been designated as confidential or if they should reasonably understand that it is confidential. They also impose this obligation on their staff and on third parties they engage.
2. The confidentiality obligation does not apply to information that is already public, that a Party has lawfully obtained from a third party, or that it must disclose by law or by court order.

3. ClickSmash does not access Client Data, unless this is necessary for the performance of the Agreement, the Client requests it, or ClickSmash is legally obliged to do so. ClickSmash limits such access to what is necessary.
4. The confidentiality obligation continues after termination of the Agreement.
5. ClickSmash may use the Client's name and logo as a reference, for example on the Website and in quotations, unless the Client objects In Writing. In doing so, ClickSmash does not disclose any confidential information.

Article 26. Staff

1. During the Agreement and for 12 months thereafter, the Client will not employ ClickSmash staff or have them work for it directly or indirectly, without ClickSmash's prior written consent. Staff also includes anyone who was employed by ClickSmash or worked for ClickSmash as a regular freelancer in the preceding 6 months.
2. ClickSmash will not withhold its consent on unreasonable grounds. It may make its consent conditional on a reasonable transfer fee.
3. If the Client acts in breach of paragraph 1, it forfeits to ClickSmash an immediately payable penalty of € 25,000 per breach, plus € 1,000 for each day that the breach continues, without prejudice to ClickSmash's right to full compensation insofar as the actual damage is higher.
4. This article does not apply to applications in response to a general, public vacancy without targeted approach or recruitment, nor insofar as Section 9a of the Dutch Placement of Personnel by Intermediaries Act (Waadi) precludes it.

Article 27. Amendment of the General Terms and Conditions

1. ClickSmash may amend or supplement these General Terms and Conditions. It announces an amendment In Writing at least 30 days before its effective date.
2. An amendment also applies to current Agreements. If the Client does not agree with an amendment that materially worsens its position, it may terminate the Agreement In Writing with effect from the effective date, unless ClickSmash declares that the previous terms continue to apply to the Client.
3. Amendments of minor importance and amendments required by new legislation apply without a right of termination.

Article 28. Final provisions

1. The Agreement and these General Terms and Conditions are governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. Disputes are submitted to the competent court of the District Court of North Holland (Rechtbank Noord-Holland), unless mandatory law provides otherwise. The Parties will first try to resolve a dispute by mutual consultation.

3. The version of communications and log files kept by ClickSmash serves as evidence, subject to proof to the contrary by the Client.
4. ClickSmash may transfer its rights and obligations under the Agreement to a successor of (part of) its business or to an affiliated company. It will inform the Client of this. The Client may transfer its rights and obligations only with ClickSmash's written consent, which ClickSmash will not withhold on unreasonable grounds.
5. The Parties will notify each other immediately of any changes in name, address, email address, telephone number and bank account number.
6. These General Terms and Conditions have been drawn up in Dutch. In the case of a translation, for example into English, the Dutch text prevails in the event of any conflict or difference in interpretation.