

SMARTLY.IO - TERMS OF USE

These Terms of Use form an integral part of the Agreement which governs the use of the Service provided by Smartly.io Solutions Oy, a Finnish limited liability company with a Finnish business identity code FI2555760-6 ("**Smartly.io**") to the customer defined in the Order Form (the "**Customer**"). By signing an Order Form or using the Service, the Customer acknowledges and agrees that the Customer is subject to these Terms of Use and that the Customer accepts these Terms of Use.

1. Definitions

As used in these Terms of Use, unless expressly otherwise stated or evident in the context, the following capitalized terms shall have the following meaning.

- 1.1 "Ad Account" means a predefined advertising account registered with Smartly.io and associated with the advertising account(s) on Facebook.
- 1.2 "Advertising Spend" means all charges payable by the Customer for all advertising conducted with respect to an Ad Account in Facebook and regardless of whether the Customer conducted advertising campaigns using the Service or not.
- 1.3 "Affiliate" means an entity which is a subsidiary or parent of, or under common control with, the Party. For these purposes, an entity shall be treated as being controlled by another if that other entity has fifty (50) per cent or more of the voting shares in such entity, or that other entity is able to direct the Party's affairs or is able to appoint a majority of the members of the board of directors or an equivalent body.
- 1.4 "Agreement" means these Terms of Use together with the Order Form and any appendices thereto which shall govern the provision of the Service by Smartly.io and the use of the Service by the Customer.
- 1.5 "Content" means any advertising content created by or on behalf of Customer for an advertising campaign or otherwise.
- 1.6 "Facebook" means the social media site known as Facebook and all advertising platforms in Facebook's ecosystem including but not limited to Facebook, Instagram, Messenger and Whatsapp and Facebook audience network.
- 1.7 "Order Form" means the order form through which the Customer orders the Service and which, by reference, incorporates these Terms of Use. In the event of a conflict between these Terms of Use and the Order Form or any other appendices thereof, the Order Form shall prevail unless expressly stated otherwise in the Terms of Use or any other appendices thereof.
- 1.8 "Party" means Smartly.io or Customer separately. Customer and Smartly.io together are referred to as the "Parties".
- 1.9 "Service" means the provision of Smartly.io Software available on a software as a service (SaaS) basis via the Internet on Smartly.io's tool and website and/or by any other means via which the service is made available or can be used as well as any ancillary services that may be available and provided by Smartly.io in relation to Smartly.io Software. In addition, the Service includes Smartly.io's support center documentation, support chat and newsletter, which contain information about the Service such as information on updates and new features in the Service.
- 1.10 "Smartly.io Software" means Smartly.io's proprietary advertising software, including any changes, updates, upgrades, modifications and enhancements made thereto, and any related modules, add-ons, tools, browser plugins and applications as well as any documentation relating thereto all of the foregoing to the extent offered by Smartly.io.

- 1.11 “Terms of Use” means these terms and conditions applicable to the use of the Service. Smartly.io may update and modify the Terms of Use from time to time and by continuing to use the Service after having been informed of the modification by written notice of Smartly.io, the Customer accepts the modification and the revised Terms of Use shall enter into force after 30 days have elapsed from the notice of revised Terms of Use. All material changes to these Terms of Use shall be informed to the Customer via email prior to them becoming effective.

2. Service

- 2.1 The Service consists of SaaS advertising tools and documentation provided by Smartly.io, and used by Customer via the Internet. The Service may be used by Customer to create, manage and optimize advertising campaigns on Facebook. The Service is described in more detail in the support center and in the platform description which may be updated from time to time by Smartly.io and is available at <https://app.smartly.io/platform-description.pdf>.
- 2.2 The Service is designed to help the Customer in creating, managing and optimizing its advertising campaigns but the Customer remains responsible for how the Customer uses the Service and for achieving the intended goals and results of Customer's advertising campaigns. Smartly.io's Service operates between the Customer and Facebook platform on which the advertising campaigns are being conducted, and it is the responsibility of the Customer to ensure that the output and results of the Service meet Customer's expectations and requirements.
- 2.3 Smartly.io is entitled to produce the Service as it deems appropriate. The Service and Facebook are constantly evolving and, as a result, the features made available on the Service may change. In the event of any substantial or major change to the Service, Smartly.io will inform the Customer on its website at <http://smartly.io/> or via the Service (e.g., in the platform, via the support center or by email to the email address on record with Smartly.io).
- 2.4 Smartly.io may provide assistance to the Customer upon request and provide support via chat in our tool. If required, the Customer must allow Smartly.io to access the necessary information. If requested by the Customer or with the Customer's approval, Smartly.io's personnel may modify Customer's advertising campaigns and other settings via Customer's Ad Accounts based on mutually agreed instructions.
- 2.5 The Service does not include, and Smartly.io does not offer, any telecommunication or networking services or equipment, security services or systems, or hardware or other equipment. If Customer requires any of the foregoing, Customer must obtain such systems, services and equipment at its own expense from third party vendors.
- 2.6 The Customer undertakes not to use the Service for any unlawful purposes. The Customer also undertakes to comply with Smartly.io's reasonable directions and requests related to the Service.
- 2.7 The Customer is responsible for complying with all laws, rules and regulations applicable to Customer, including all laws, rules and regulations related to advertising and conducting advertising campaigns.

3. Registration and trial period

- 3.1 Unless otherwise agreed, the Customer shall register on <https://app.smartly.io/> before commencing the use of the Service. In connection with the registration, the Customer shall sign up to the Service and authorize Smartly.io's access to the Customer's Facebook accounts and to all the information therein and the Customer shall register the Ad Accounts with the Service. Smartly.io shall confirm Customer's registration and the Ad Accounts in due course after having received the registration. The Customer may add and remove its Ad Accounts in the Service.
- 3.2 In order to use the Service, the Customer is required to complete an online registration. Customer is entitled to use the Service free of charge for a 14 day trial period. The trial period starts on the first day the Service is used by the Customer or when otherwise agreed in writing. The Customer's right to use

the Service shall automatically continue after expiry of the trial period unless the Customer notifies Smartly.io in writing and before the expiry of the trial period that it does not wish to continue to use the Service after the trial period. In the absence of such written notice, the Customer's right to use the Service shall continue after the trial period for an indefinite period until terminated in accordance with Section 9 below. The use of the Service after the trial period is subject to the fees set forth in Section 5 below. Except for an obligation to pay fees pursuant to Section 5, all other provisions of these Terms of Use shall apply during the trial period.

4. Rights of Use and Proprietary Rights

- 4.1 Subject to the Customer's compliance with all the terms of this Agreement, Smartly.io grants to the Customer a non-exclusive, non-transferable, limited right to access and use the Service, against due payment of the agreed fees, solely in connection with the registered predefined Ad Accounts in Facebook.
- 4.2 Customer shall not i) attempt to copy, modify, duplicate, create or prepare derivative works from or based upon, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service in any form or media or by any means; ii) access all or any part of the Service in order to build a product or service or feature which competes with the Service; iii) attempt to obtain, or assist third parties in obtaining, unauthorised access to the Service; iv) license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise make the Service available to any unauthorised third party; or v) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the Smartly.io Software (except and only to the extent any foregoing restriction is prohibited by applicable law). If Customer grants any subcontractor, supplier, end-customer or other third party any access to the Service, such subcontractor, supplier, end-customer and third party shall be considered equivalent to the Customer for the purposes of these Terms of Use and the Customer shall be fully responsible and liable for all acts and omissions of such subcontractor, supplier, end-customer and third party as well for ensuring their compliance with this Agreement.
- 4.3 The Customer agrees and acknowledges that the title and all intellectual property rights in and to the Service and any data, documentation, images and/or Smartly.io Software related thereto are owned and remain vested in Smartly.io or a third party. No intellectual property rights of Smartly.io shall be transferred pursuant to these Terms of Use. Smartly.io agrees that, unless otherwise agreed in this Agreement, Customer-owned materials provided by the Customer to Smartly.io in connection with the Service shall remain the property of the Customer and Smartly.io agrees that the title and all intellectual property rights in and to such Customer-owned materials remain vested in the Customer.
- 4.4 If the Customer comments the Service or provides suggestions or ideas for improving the Service, notwithstanding anything stated to the contrary in this Agreement, the Customer agrees that all such comments, suggestions and ideas thereof will be fully assigned to Smartly.io and hence Smartly.io shall own all rights to use and incorporate them into its product offerings.
- 4.5 For the avoidance of doubt, if the Service includes third-party solutions for which the Customer has a direct contractual relationship with the providers of these third-party solutions (such as Facebook or other marketing platform or mobile measurement providers) regardless of anything to the contrary stated herein, their use shall be exclusively governed by their provider's terms and conditions in their standard form, or as negotiated between the Customer and such third party, applicable to such solutions. This Agreement does not modify or amend, and is not in lieu of, any terms, policies or rules of Facebook or any other third-party provider used by Customer.

5. Fees

- 5.1 Smartly.io's fee is a defined percentage of Customer's Advertising Spend per Ad Account(s) with the aforesaid percentage and the monthly minimum fee defined in the price list made publicly available at <http://smartly.io/pricing>. The fee shall be calculated and invoiced after each calendar month based on the Customer's Advertising Spend. For the first month of use, at least a monthly minimum fee is charged if Customer's free trial period had expired before end of the calendar month and the Customer

continued to use the Service after such trial period. Any additional work referred to in Section 2.4 above shall be charged separately on a time and material basis as agreed separately by the Parties in writing.

- 5.2 If the Agreement is terminated as described hereinafter in Section 9, for the last month of use, at least a monthly minimum fee is charged if the Agreement had terminated before end of the calendar month.
- 5.3 Smartly.io may change the fees from time to time upon 30 days prior notice. The change shall not affect the fees for invoicing periods commenced before the effective date of the change. In case of a price change the Customer shall be entitled to terminate this Agreement to end on the effective date of the price change by notifying Smartly.io thereof in writing.
- 5.4 The fees for the Service are invoiced monthly in arrears via credit card or invoice, depending on the payment method offered by Smartly.io at the time and chosen by the Customer. Customer shall remit payment 14 days net from the date of invoice. Interest on delayed payments accrues at 12% per annum or the maximum legal interest rate for late payment, whichever is less.
- 5.5 The fees are exclusive of VAT and any other governmental taxes and levies. The Customer shall be solely responsible for VAT and other taxes and levies imposed on the Customer by applicable laws and authorities in relation to the fees.

6. Warranties

- 6.1 Smartly.io endeavours to make commercially reasonable efforts to ensure that the Service will be available for use on a 24/7 basis excluding temporary maintenance, updating and repairs. Smartly.io does not assume any liability for usage interruptions or breaks, but it endeavours to inform the Customer of Service issues whenever reasonably possible. Smartly.io does not warrant that the Service will be uninterrupted or error-free. However, Smartly.io agrees to use commercially reasonable efforts to be at Customer's disposal in order to support the Customer and to correct any material error or deficiency in the Service.
- 6.2 The warranty does not cover errors or deficiencies attributable to (a) changes to the Service made by the Customer which have not been approved by Smartly.io in writing; (b) use of the Service contrary to these Terms of Use, or the written instructions given by Smartly.io; (c) use of the Service contrary to the Facebook terms and policies; (d) disturbances or interruptions in the Service due to data network; or (e) a service or product not supplied by Smartly.io or other similar reason outside of the Service.
- 6.3 The Customer acknowledges that the use of the Service is dependent on Facebook in which Customer's advertising campaigns are carried out and that the actions of the Customer and third-party data providers may also affect the use of the Service. Smartly.io does not accept any liability for the operation and function of any Customer or third-party products, services, actions or omissions, including, but not limited to, those of third-party data providers, Facebook or any third party that operates in or with Facebook.
- 6.4 TO THE EXTENT ALLOWED BY MANDATORY LAW, SMARTLY.IO DOES NOT HAVE ANY OTHER RESPONSIBILITY OR LIABILITY FOR THE SERVICE. THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND SMARTLY.IO EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, CORRECTNESS AND FITNESS FOR A PARTICULAR PURPOSE.

7. IPR Indemnification and Limitation of Liability

- 7.1 Provided that the Customer remains in compliance with this Agreement, Smartly.io will defend or settle any claim made against the Customer for any intellectual property rights violation relating to the Service arising solely from the actions for which Smartly.io is legally responsible. Customer agrees

i) to promptly notify Smartly.io in writing of any such claim, ii) to allow Smartly.io to have sole control over the defence, litigation and/or settlement of any such claim and iii) to cooperate with Smartly.io in the investigation, defence and settlement thereof. Smartly.io shall indemnify Customer for such claim by paying the costs and reasonable attorneys' fees Customer incurs as a result of such claim, including damages awarded to such third party in a judgment finally awarded against Customer or settlement approved by Smartly.io. If such claim is made or, in Smartly.io's opinion, is likely to be made, then Smartly.io may, at its sole discretion, (i) modify the Service or if it's not commercially reasonable for Smartly.io to modify the Service, (ii) terminate the Service and/or the Agreement with immediate effect. In no event shall the termination of the Service or the Agreement due to infringement relieve Smartly.io from its obligation to defend and indemnify Customer as set forth herein. Smartly.io shall not settle any claim on behalf of Customer without Customer's prior written consent if the settlement requires any admission of fault by Customer.

- 7.2 The Customer shall defend or settle any claim made against Smartly.io, and if applicable, its licensors, and each such Party's parent organizations, subsidiaries, Affiliates, officers, directors, and employees, if such claim arises out of or in connection with: (a) Customer disrupting the Service in violation of applicable legislation or in violation of Section 4.2 of these Terms of Use; or (b) Customer's infringement or alleged infringement of any third party's intellectual property right or (c) the Content. Smartly.io agrees i) to promptly notify the Customer in writing of any such claim, ii) to allow the Customer to have sole control over the defence, litigation and/or settlement of any such claim and iii) to reasonably cooperate with the Customer in the investigation, defence and settlement thereof. The Customer shall indemnify Smartly.io and if applicable, its licensors, and each such Party's parent organizations, subsidiaries, Affiliates, officers, directors, and employees for such claim by paying the costs and reasonable attorneys' fees incurred by the foregoing persons or parties as a result of such claim, including damages awarded to such third party in a judgment finally awarded against Smartly.io or settlement approved by the Customer. Customer shall not settle any claim on behalf of Smartly.io without Smartly.io's prior written consent if the settlement requires any admission of fault by Smartly.io.
- 7.3 Smartly.io shall have no obligations under this Section 7 to the extent any infringement claim arises from: a) the Customer's combination of the Service with other software or services or Customer's modification to any part of the Service or Customer's violation of Section 4.2 if such claim would not have been made but for Customer's combination or modification or Customer's violation of Section 4.2; or b) information or materials provided by the Customer and used by Smartly.io for the performance of the Service in accordance with this Agreement or c) the Content.
- 7.4 The foregoing remedies constitute Customer's sole and exclusive remedies and Smartly.io's entire liability with respect to third party infringement claims.
- 7.5 NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING ATTORNEYS' FEES) IN ANY WAY ARISING IN CONNECTION WITH THE SERVICE OR THESE TERMS OF USE, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOST BUSINESS OPPORTUNITIES OR LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.6 EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT MAY NOT IN ANY CALENDAR YEAR STARTING FROM THE DAY THE CUSTOMER STARTED USING THE SERVICE EXCEED AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF FEES RECEIVED BY SMARTLY.IO FROM THE CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.
- 7.7 THE LIMITATIONS SET FORTH ABOVE IN SECTION 7.5 AND 7.6 SHALL NOT APPLY TO (i) A VIOLATION OF SECTION 4.2; OR (ii) THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 7.1 AND 7.2.

8. Confidentiality

- 8.1 Each Party shall keep in confidence all material and information received from the other Party and marked as confidential or which should be understood to be confidential, and may not use such material or information of the other Party for any purpose other than for the proper fulfilment of the Agreement. The confidentiality and non-use obligations shall not, however, be applied to material and information: (a) which is generally available or otherwise public; or (b) which the receiving Party has received from a third party without any obligation of confidentiality; or (c) which was in the possession of the receiving Party prior to receipt of the same from the other Party without any obligation of confidentiality related thereto or breach of confidentiality obligations.
- 8.2 Notwithstanding the confidentiality provisions, Smartly.io may collect and analyse the Customer's advertising spend data and trends but may only disclose this Customer data if the data is de-identified or if it is not attributable to any individual or company. In addition, Smartly.io may collect, analyze, and use aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata etc.) to facilitate market research and analysis, quality control, product development/improvement and to provide support and maintenance services. Smartly.io may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual or company.
- 8.3 Each Party shall promptly upon termination of the Agreement (or when the Party no longer needs the material or information in question for the purposes of the Service) cease using confidential material and information received from the other Party and, unless the Parties separately agree on destruction of such material, return the material in question (including all copies thereof). Each Party shall, however, be entitled to retain the copies required by law or regulations and Smartly.io may use information in the connection with Section 8.2.
- 8.4 The confidentiality and non-use obligations set out herein will remain in force for five (5) years from the disclosure of each respective confidential material and/or information except that the foregoing time limit shall not apply to trade secrets.

9. Term and termination

- 9.1 Customer may terminate the Agreement and the use of the Service with immediate effect at any time by a prior written notice (email being sufficient) to the account manager assigned to Customer or to info@smartly.io, in which case Smartly.io shall send the Customer a written confirmation regarding termination without undue delay. Upon termination Smartly.io shall end charging of the Customer. However, at least a monthly minimum fee is charged if the Agreement has been terminated before the end of the calendar month.
- 9.2 Smartly.io may terminate the Agreement and the use of the Service for convenience upon 30 days prior written notice by email.
- 9.3 Either Party may terminate this Agreement with immediate effect, if the other Party is in material breach of its obligations hereunder and fails to remedy such breach within 14 days written notice given by the non-breaching Party.
- 9.4 Upon expiration or termination of this Agreement, the Customer is obliged to cease the use of the Service and shall return or, upon Smartly.io's request, destroy Smartly.io's material in its possession and upon Smartly.io's request confirm in writing that it has complied with the aforesaid.
- 9.5 Upon termination for whatever reason, no paid fees will be returned by Smartly.io, and the Customer is obliged to pay the fees past due at the effective date of such termination. In the event that fees are not fully paid when due or the obligations set out in this Agreement are not otherwise followed by the Customer, Smartly.io reserves the right to terminate the Customer's right to use the Service with immediate effect.

10. Processing of data

- 10.1 The Customer expressly acknowledges and agrees that it is Customer's obligation to observe and to comply with any and all privacy and data protection laws (including but not limited to EU General Data Protection Regulation, GDPR), regulations and terms applicable to information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context ("Personal Data") contained in the materials provided by the Customer for the purposes of the Service regardless of the country/state in which the Customer is based. The above mentioned includes, but is not limited to, complying with terms and restrictions related to Customer's use of customer/contact databases and complying with any applicable privacy policies and cookie opt-in policies.
- 10.2 In the event that (i) Smartly.io in connection with the Service processes Personal Data as a processor on behalf of the Customer and (ii) the applicable legislation (such as the GDPR) requires Parties to put in place a data processing agreement (DPA) to govern such data processing, the DPA attached to these Terms of Use as Annex A shall apply. In such event, the DPA set forth in Annex A forms an integral part of the Agreement and shall be applied to the processing of Personal Data by Smartly.io as a processor.
- 10.3 Smartly.io may collect and process Personal Data regarding Customer's personnel and/or other representatives of the Customer using the Service for the Customer. Such processing is described in Smartly.io's Privacy Policy, the current version of which is available via the Service and on Smartly.io's website. The Customer shall ensure that its employees and representatives engaging with the Service are informed about the contents of Smartly.io Privacy Policy.

11. Applicable law and dispute resolution

- 11.1 The Agreement will be governed by the laws of Finland excluding its provisions relating to the choice of law.
- 11.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The proceedings shall take place in the English language in Helsinki, Finland.
- 11.3 Existence of arbitral proceedings, the proceedings, any material presented or drafted in relation to the proceedings and the verdict shall be considered as confidential information under this Agreement.

12. General Provisions

- 12.1 Smartly.io is entitled to change the working methods, hardware, data communication links, software, user interface or other system components used in the providing the Service. Smartly.io may also use subcontractors.
- 12.2 Smartly.io is entitled to use Customer's name and logo as a reference for advertising purposes.
- 12.3 Neither Party may assign this Agreement without other Party's prior written consent. Parties shall, however, be entitled to assign this Agreement in whole or in part to its Affiliates and in the connection with a merger or acquisition process including but not limited to the transfer of business and/or any other corporate transaction or restructuring.
- 12.4 No provision or right under this Agreement shall be considered waived without an explicit written statement or agreement signed by the waiving Party in each specific case. A waiver of any term, provision or right under this Agreement shall not be construed as a waiver of any other term, provision or right hereunder.

- 12.5 Neither Party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, terrorism, or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed Party must promptly provide the other Party with written notice of the Force Majeure. The delayed Party's time for performance will be excused for the duration of the Force Majeure.
- 12.6 This Agreement and the information submitted by the Customer during the registration process for the Service constitute the entire agreement with respect to its subject matter and replaces and supersedes any prior written and/or verbal communications.
- 12.7 If any provision herein is held to be invalid or unenforceable to any extent, then such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent.
- 12.8 Headings in these Terms of Use are for convenience of reference only and shall in no way affect interpretation of the Agreement.

ANNEX A - DATA PROCESSING AGREEMENT (DPA)

1 Background and purpose

1.1 This Annex on data processing agreement (“**DPA**”) is an annex to and forms an integral part of the service agreement or other written or electronic agreement (“**Agreement**”) which governs the use of Services (as defined in Section 2) provided by Smartly.io to the Customer, as defined below.

1.2 In the course of providing the Service to the Customer pursuant to the Agreement, the Smartly.io may process Personal Data on behalf of Customer. The purpose and scope of this DPA is to agree on the terms and conditions for the Processing of Personal Data by Smartly.io on behalf of the Customer in connection with the Services. This DPA together with the Agreement forms a data processing agreement in the meaning of applicable Data Protection Laws. For the purposes of this DPA only, and except where indicated otherwise, the term “Smartly.io” shall also include Smartly.io’s Affiliates.

1.3 The parties acknowledge and agree that, by executing the Agreement to which this DPA is attached, the Customer enters into this DPA on behalf of itself and, as applicable, in the name and on behalf of its Affiliates authorised to use the Services, thereby establishing a separate data processing between Smartly.io and each such authorized Affiliate. Each authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement.

2 Definitions

2.1 For the purpose of this DPA, unless expressly otherwise stated or evident in the context, the following capitalised terms shall have the **following** meanings, the singular (where appropriate) shall include the plural and vice versa, and references to Sections or Subsections shall be references to sections and subsections of this DPA.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer or Smartly.io. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. Smartly.io’s Affiliates are listed at www.smartly.io or its subpages.

“**Controller**” means the entity, which determines the purposes and means of the Processing of Personal Data.

“**Customer**” means Smartly.io’s customer or other business partner for which Smartly.io is providing the Services.

“**Data Protection Laws**” means applicable data protection regulations and legislation, including but not limited to the GDPR and the data protection or privacy laws of any other country.

“**Data Subject**” means the identified or identifiable person to whom Personal Data relates.

“**EU**” means European Union.

“**EEA**” means the European Economic Area.

“**GDPR**” means the Regulation (EU) 2016/679 of the European parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data

and on the free movement of such data, and repealing Directive 95/46/EC.

“**Personal Data**” means any information relating to an identified or identifiable natural person.

“**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“**Processor**” means the entity which Processes Personal Data on behalf of the Controller.

“**Services**” mean the services described in the Agreement and other services supplied by or on behalf of Smartly.io to the Customer either directly or through a third party engaged by the Customer.

“**Standard Data Protection Clauses**” has the meaning given to it in Section 5.4.

“**Sub-processor**” means another processor engaged by Smartly.io in the Processing of Personal data and, where applicable, possible other Processor engaged by the Sub-processor of Smartly.io.

“**Supervisory authority**” shall have the meaning set forth in the GDPR.

2.2 In addition, unless expressly otherwise stated, the applicable definitions provided in the Agreement shall be applied to this DPA. In case a definition provided in this DPA and a definition provided in the Agreement conflicts, for the purposes of this DPA the definition provided in this DPA shall prevail.

3 Processing of Personal data

3.1 Roles of the Parties

3.1.1 For the purposes of the Processing of Personal Data, the Customer shall be the Controller and Smartly.io shall be the Processor. There are also other parties involved in the provision of the Services (such as providers of social media marketing platforms). However, Smartly.io does not have an access to the personal data held and processed by such third parties and such processing is not in the scope of this DPA.

3.2 Subject matter, nature and purpose

3.2.1 For the purposes of performing the Services, Smartly.io Processes Personal Data on behalf of the Customer.

3.2.2 The nature and the purpose of the Processing is to supply and enable the Services provided by Smartly.io to the Customer. The Processing of Personal Data shall take place solely for the purposes defined herein and Smartly.io shall not be entitled to use the Personal Data for any other purposes, unless otherwise stated in the Agreement. The Customer hereby authorises Smartly.io to transfer Personal Data to those social media platforms and other third parties who are involved in the provision of the Services.

3.2.3 Nothing in this DPA shall operate to transfer, assign or otherwise grant to Smartly.io any right or interest to the Personal Data, unless otherwise stated in the Agreement.

3.3 *Personal data and Data subjects*

3.3.1 The Customer may submit Personal Data to the Services, the extent of which is determined and controlled by the Customer in its sole discretion.

3.3.2 The types of Personal Data subject to the Section 3.2.1, considering the nature of the Services, consist of the end-user data from the social media platforms used by the Customer, and possible direct and indirect Personal Data included to the custom conversion data provided by the Customer or conversion data provided by Smartly.io's integrations as agreed in the Agreement.

3.3.3 Personal Data may include also other type of Personal Data if required by the purpose of the Processing as agreed between the Parties.

3.3.4 Personal Data may concern also other categories of Data Subjects if required by the purpose of the Processing as agreed between the Parties.

3.4 *Duration and termination of the Processing*

3.4.1 This DPA become effective simultaneously with the Agreement and shall continue to be in effect until the Agreement is terminated. The duration of the Processing of Personal Data is conditional to the term of the Agreement. Certain Processing activities shall be conducted as long as such Processing is required for the supply of the Services.

3.4.2 If any Processing by Smartly.io is required after termination of the Agreement, e.g. in order to transfer data back to the Customer such Processing shall be conducted in accordance with the provisions of this DPA.

3.4.3 In the event of termination of the Agreement, Smartly.io shall delete the Personal Data, or if requested by the Customer in writing, return the Personal Data to the Customer in commonly used format as soon as practically possible after the end of the Agreement and shall be deleted thereafter from the systems of Smartly.io.

3.4.4 If and to the extent it is required by law that any Personal Data need to remain in the possession of Smartly.io, the Customer shall be notified thereof and shall be provided with copies of such data. In such case, Smartly.io shall ensure the confidentiality of all such Personal Data and shall ensure that such Personal Data is processed only when necessary for the purpose(s) specified in the applicable laws requiring such storage and for no other purpose.

3.4.5 After the termination of the Agreement, Smartly.io shall provide, upon the Customer's request, the Customer with a written certification that it has fully complied with the Subsections from 3.3.3 to 3.3.4 above.

3.5 *Instructions for Processing*

3.5.1 The Personal Data shall be processed in accordance with Customer's documented instructions for Processing of the Personal Data. This DPA and the Agreement are Customer's complete and final documented instructions at the time of signature of the Agreement to Smartly.io for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the avoidance of doubt, Customer's instructions for the Processing of Personal Data shall comply with Data Protection Laws.

3.5.2 Smartly.io shall process the Personal Data only according to documented instructions given by the Customer,

including with regard to transfers of Personal Data to a country outside the EU/EEA.

3.5.3 The instructions referred to in Subsection 3.5.1 may be amended from time to time as needed for the purposes of the Processing.

3.5.4 If Smartly.io may not follow the instructions given by the Customer due to applicable compelling laws or it considers an instruction to infringe any law, Smartly.io shall immediately inform the Customer of such matter.

3.6 *General obligations of the Parties*

3.6.1 Customer shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

3.6.2 Parties shall comply with all applicable Data Protection Laws in the Processing of the Personal Data. In addition, Smartly.io must adhere with good practices of the industry.

3.6.3 Smartly.io shall implement appropriate technical and organisational measures for security of Processing in order to ensure an appropriate level of security as required by the Data Protection Laws and considering the Personal Data specified in Section 3.3, including the measures provided in the Section 6 below.

3.6.4 Smartly.io shall provide reasonable assistance to the Customer in ensuring the compliance with the provisions on security of the Personal Data as set forth in the Data Protection laws.

3.6.5 Smartly.io shall assist the Customer by appropriate technical and organisational measures in the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights under the Data Protection Laws.

3.6.6 Smartly.io shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this DPA and the Data Protection Laws, in particular with the principles relating to Processing of Personal Data as laid down in the GDPR.

4 *Subcontractors*

4.1 Customer acknowledges and agrees that (a) Smartly.io's Affiliates may be retained as Sub-processors; and (b) Smartly.io and its Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services.

4.2 Upon Customer's request, Smartly.io shall inform the Customer in writing of the Sub-processors used in the Services and the specific Processing activities they are engaged for. Smartly.io shall also inform the Customer in writing of any intended changes concerning the addition or replacement of Sub-processors, thereby giving the Customer the opportunity to object to such changes.

4.3 Where Smartly.io engages a Sub-processor for Processing, Smartly.io has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this DPA with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor, in particular regarding the provision of sufficient guarantees to implement appropriate technical and organizational measures in such a

manner that the Processing will meet the requirements of the applicable Data Protection Laws.

4.4 Smartly.io hereby enters into this Agreement for and on behalf of each of its Affiliates, thereby establishing a separate data processing agreement between the Customer and each such Smartly.io Affiliate. Addition or replacement of such Smartly.io Affiliates shall be subject to Subsection 4.2 above. The Customer may not object such additions or replacements without a cogent reason.

4.5 Where a Sub-processor fails to fulfil its data protection obligations, Smartly.io shall remain fully liable to the Customer for the performance of the Sub-processors obligations and any liabilities related thereto to the same extent Smartly.io would be liable if performing the services of each Sub-processor directly under the terms of this DPA.

5 Location and transfers of data

5.1 The provisions of Sections 5.2-5.4 shall apply to any transfers of Personal Data processed under this DPA from the EU/EEA to countries that do not ensure an adequate level of data protection within the meaning of Data Protection Laws of the foregoing territories.

5.2 Smartly.io may transfer to or process Personal Data in a non-EU/EEA country, which the EU Commission has not found to provide an adequate level of protection. In case Smartly.io or Sub-processor engaged by Smartly.io processes or in any way makes the Personal Data accessible outside the EU/EEA countries it must secure that such Processing is performed under appropriate safeguards and otherwise complies with the statutory requirements regarding the Processing of Personal Data outside the EU/EEA countries.

5.3 When applicable, Smartly.io shall assist the Customer to enter into appropriate contractual arrangements with the recipient in a non-EU/EEA country for the transfer of Personal Data to the applicable third countries outside the EU/EEA as adopted and approved by the EU Commission or competent data protection regulatory authority in accordance with applicable Data Protection Laws ("**Standard Data Protection Clauses**"). Alternatively, the Customer may authorise Smartly.io to enter into Standard Data Protection Clauses on its behalf.

5.4 Upon on the Customer's request, Smartly.io shall provide written information about the location(s) in which Personal Data is processed pursuant to this DPA.

6 Security of Processing

6.1 Smartly.io shall implement and maintain at all times appropriate operational, administrative, physical and technical measures in accordance with common industry practice to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

6.2 Smartly.io shall ensure that persons authorised to process the Personal Data have committed themselves to appropriate confidentiality or are under an appropriate statutory obligation of confidentiality.

6.3 Smartly.io shall limit access to the Personal Data to personnel on a need-know-basis. The Personal Data and the persons accessing to any data shall be limited to what is necessary in relation to specific Processing activities.

7 Data breaches

7.1 In case of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data ("**Data Breach**"), Smartly.io shall notify the Customer thereof in writing without undue delay after having become aware of it. The notification shall at least:

- (a) describe the nature of the Data Breach, the affected Personal Data, including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- (b) communicate the name and contact details of a contact point where more information can be directly obtained in case such person is other than the contact person under the Agreement;
- (c) describe the likely consequences of the Data Breach, in particular to the Personal Data; and
- (d) describe the measures taken or proposed to be taken by Smartly.io to address the Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

7.2 Where, and in so far as, it is not possible to provide the information under the Section 7.1 at the same time without undue delay, the information may be provided in several parts within the time limit.

7.3 Upon the Customer's request, Smartly.io shall assist the Customer with reasonable effort to document an occurred Data Breach as required by Data Protection Laws.

7.4 Upon the Customer's request, Smartly.io shall assist the Customer with reasonable effort in reporting the Data Breach to the supervisory authority and to the data subjects in accordance with the Customer's instructions.

8 Audit

8.1 The Customer or another auditor mandated by the Customer may, once a year at most, audit the level of the data protection on and appropriateness of the Processing of Personal Data by Smartly.io upon fourteen (14) working days' prior written notice to ensure the compliance with this DPA and Data Protection Laws.

8.2 The auditor mandated by the Customer may not be direct or indirect competitor of Smartly.io. Smartly.io has a right to require the mandated auditor to enter into an appropriate confidentiality agreement prior to the audition.

8.3 Smartly.io shall contribute to the aforementioned audits and make available all information required to complete the audits. The audits shall be performed during the normal working hours and shall not unreasonably disturb the operations of Smartly.io.

8.4 Customer shall carry its own costs relating to the audits and shall reimburse Smartly.io for any reasonable costs and expenses that Smartly.io may incur due to any such audit. Before the commencement of any such on-site audit, Customer and Smartly.io shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible.

8.5 The Parties agree that Smartly.io has the right to provide the Customer with an audit report covering the data

processing and especially the technical and organizational security measures at its own costs. In this case, the Customer agrees that the rights to audit Smartly.io have been satisfied and that the Customer has no additional rights under this Section 8 to audit Smartly.io provided that

- a) the audit has been performed by a recognized, independent third party with proven experience in the field; and
- b) the audit report is no older than twelve (12) months.