

Smart.pr General Terms and Conditions

We are Smart.pr B.V. (**Smart.pr**). These are our general terms and conditions (the **Terms**). Our users are PR professionals who can use our **Smart.pr Web Application** (also: **Web Application**) to, among other things, follow the news, manage media relations, send Press Releases, and measure the effect of their Press Releases. We refer to the Web Application, the Website, all (optional) Features within it and our additional services as our **Service(s)**. These Terms apply to all offers, quotations, agreements, and collaborations between Smart.pr and its Customers. We offer the Service subject to the Customer's acceptance of these Terms.

1 Definitions

- 1.1 **Agreement** | The agreement between Smart.pr and the Customer (jointly: the **Parties**) for the access to and use of the Services. The Agreement is established through the acceptance of a digital quotation or other offer (**Offer**) between the Customer and Smart.pr, whereby these Terms are accepted. The Agreement therefore consists of the accepted Offer and these Terms jointly.
- 1.2 **Customer** | The organization that has entered into an Agreement with Smart.pr to purchase our Services.
- 1.3 **User** | The natural person who, based on the Agreement between the Customer and Smart.pr, is authorized to create an Account in order to use our Services. In case the Customer is also the User, the provisions regarding User(s) shall apply equally to the Customer;
- 1.4 **Website** | The website www.smart.pr and any other website through which we provide our Services, including subdomains.

2 Account, Web Application and Features

- 2.1 In order to use the Services, the User must create an account (the **Account**). During the registration of the Account, the User shall enter a username and password by which access is obtained to the Web Application. The Customer can manage the access and rights of the authorized Users in the Web Application itself, and the Customer bears full responsibility for this management. The Customer guarantees that only authorized Users shall use the Services.
- 2.2 In the Web Application, the User has access to the following features, and functions that may be added or modified later (the **Features**):
 - 2.2.1 **Dashboard**: Via the Dashboard within the Web Application, Smart.pr will display, in a manner of her choosing, the effectiveness of a Mailing to the User. This effectiveness gives the User an indication of whether a Mailing has reached the recipients chosen by the User, whether the mailing was opened, whether attachments were downloaded and whether recipients unsubscribed from further communication from the Customer. This effect is measured for the User by means of an email tracking pixel in Mailings, which the User herself can choose to enable or disable.
 - 2.2.2 **Mailings**: Via the Account, the User can create, edit, and distribute Mailings (also: **Press Releases**), consisting of materials such as (but not limited to) text, photo, video and/or audio materials, either in the Mailing itself or as an attachment.
 - 2.2.3 **Address Book**: Here the User can, among other things, manage media relations and press lists. The User can put in and use her own contacts (also: **Own Contacts**) as well as use contacts from the Journalist Database, in case the User is authorized to do so.
- 2.3 The User may use the following additional Features in the Web Application (including any future additions and/or changes thereto), if she chooses to purchase these Services and accepts the rates and terms separately applicable:
 - 2.3.1 **News**: This feature allows the User to find authors and publicists by searching recent news and journalistic content by author name, medium, and/or topic, and to follow news searches (including notifications, for example by email) that are relevant to her, from media sources that we make searchable through the Service, and from content that journalists add themselves. Similar to an online search engine, News shows the User hyperlinks to the websites of various media sources themselves, plus (if applicable to a particular media source) a short text ("snippet") and/or image.
 - 2.3.2 **Journalist Database**: Through this Feature, the User has access to (contact) data of media and journalists. The User can use this data in her Address Book and use it for her Mailings. Smart.pr offers Journalist Databases for various countries. From this selection, the Customer can choose which Journalist Databases she would like to use.
 - 2.3.3 **External Monitoring**: If desired, the User can share her Mailing(s) via the Web Application with our specialist monitoring partners through an integration with their services, in order to measure the effect of her Press Release in the news media, as well as on social media. This requires a separate agreement with one of these specialist partners.
- 2.4 Additional Features are only offered in combination with the Features stated in Article 2.2, which *always* exist in the Web Application. Additional Features can therefore not be obtained separately by the Customer.
- 2.5 Smart.pr may include (part of) the Additional Features in the Features to which the Customer has standard access and vice versa. If this occurs, all provisions in these Terms regarding these (Additional) Features will remain in full force.

3 Dashboard, News and External Monitoring

- 3.1 Smart.pr makes every reasonable effort to accurately display the measured effectiveness of the Mailings at any time in the Dashboard. The User cannot derive any rights or guarantees from the displayed effectiveness or any other measured results of Mailings.
- 3.2 Smart.pr makes every reasonable effort to always present correct and complete results to the User regarding the use of the News Feature, both in the search functionalities and regarding the authors, publicists, or topics that the User follows. The User cannot derive any rights or guarantees from the displayed results or from the other information resulting from the News Feature.
- 3.3 All (Intellectual Property) rights vested in (the content of) the results of News are at all times owned by the publicist and/or the medium or platform the publicist is associated with. The Customer only acquires a limited, personal, revocable, non-exclusive, non-transferable right of use to these results, in accordance with these Terms. The Customer is never entitled, among other things, to reproduce and/or publish (parts of) the results of News, make changes to these results, distribute, transfer, license, archive or reuse them, or commercially exploit and/or use them outside of the Web Application in any other way.
- 3.4 Within News, the User can set up her own searches. She can also indicate the frequency with which she wants to receive notifications about these searches, in case there are search results, either by email or within the Web Application.
- 3.5 The Customer acknowledges and accepts that the content, scope, and prices of, as well as the conditions under which News is offered as part of the Service, can change as a result of changes in legislation and/or the policy of publicists and/or media parties, the latter being the parties entitled to the (Intellectual Property) rights of the results of News.
- 3.6 If applicable, the Customer shall make separate appropriate arrangements about the use and (Intellectual Property) rights vested in (the contents of) the results of External Monitoring with the specialist partner providing the External Monitoring. The Customer shall ensure that these arrangements are similar to the arrangements in Article 3.3.
- 3.7 If the Customer requires other types of search results (e.g. full articles), in addition to (the results of) News, she is free to enter into separate agreements with either our External Monitoring partners, or with publicists or media parties directly. Smart.pr has no influence on such agreements and is therefore not a party to them.

4 Journalist Database

- 4.1 Smart.pr makes every reasonable effort to offer the best Journalist Database on the market. Nevertheless, it cannot guarantee the accuracy and completeness of the (contact) data included in the Journalist Database. In case the User discovers any inaccuracy or incompleteness, the User can report this via the Web Application, or by sending an email to feedback@smart.pr.
- 4.2 The User cannot send any Mailings via the Web Application to anyone in the Address Book who has specified that he/she does not wish to receive any Mailings from the Customer (anymore), or in case Smart.pr has made this wish known, and/or in case Smart.pr has blocked this person's details in the Journalist Database because this person does not wish to receive any Mailings under any circumstances. If the User circumvents these blockades by sending someone a (press) message or Mailing via another system, Smart.pr may delete the Account of the relevant Customer and take any other measures, without refunding any payments.
- 4.3 Any use of the Journalist Database other than for the distribution of Mailings relevant to the recipient, or for other professional PR work, is prohibited under these Terms. As a guide for this purpose, Smart.pr shares a Code of Conduct with each User upon initial login. The Customer is herself responsible, for example, to comply with the information obligations under the GDPR, to keep data records, to deal with data breaches correctly, or to investigate whether press releases are relevant to the receiving journalist.
- 4.4 The User shall never reproduce and/or disclose (parts of) the Journalist Database, make changes to it, distribute, transfer, license, or otherwise commercially exploit it and/or use it outside of the Web Application. To clarify: the User is allowed to export her Own Contacts from the Address Book to a location outside of the Web Application. The email addresses of contacts from the Journalist Database cannot be exported by the User.
- 4.5 The Customer and/or User shall under no circumstances share any (personal) data from the Journalist Database with third parties.

5 Conditions of Use

- 5.1 The Customer guarantees that Users shall use the Services in accordance with these Terms, and in particular these Conditions of Use in Article 5. The User is fully responsible for her own actions when using the Service. Users shall take the Code of Conduct they receive upon first logging into the Web Application as a guideline for using the Service.
- 5.2 The User shall use the Services in line with what can be expected of a responsible and careful internet user. Each User is responsible for keeping her own username and password confidential. She shall never share this information with colleagues or third parties. Smart.pr may assume that the User is the unique person who logs in and uses the Account. As soon as the User knows or suspects that an unauthorized person has access to the Account, she shall inform Smart.pr without delay.

- 5.3 The User shall not take any actions that may infringe the Intellectual Property Rights of Smart.pr and/or third parties. Furthermore, the User shall not remove, obscure, conceal or alter any notices or statements relating to any Intellectual Property Rights.
- 5.4 When using all of our Services the User warrants that:
- 5.4.1 The User is entitled to use and distribute the information, including but not limited to the Address Book and the Mailings, via the Services;
 - 5.4.2 The User owns the Intellectual Property Rights to the Mailing or has obtained the required consents and/or licenses to distribute such Mailing via the Website or Web Application, or otherwise disclose and/or reproduce it as laid down in these Terms;
 - 5.4.3 User has the consent of any persons whose portrait and/or name is used in the Mailing, insofar as the User is required to do so by law;
 - 5.4.4 The User only uses the Services in the context of her role as PR professional with the associated professional activities, including but not limited to contact or relationship management with media and press, sending Press Releases, news research and/or reporting.
- 5.5 The User guarantees that she shall not distribute any Mailing:
- 5.5.1 that infringes on the rights of Smart.pr or third parties, including but not limited to Intellectual Property Rights or rights relating to the protection of privacy;
 - 5.5.2 that is discriminatory and/or insulting or incites violence and/or harassment of another or others;
 - 5.5.3 that leads to or is the result of exploitation or abuse of others;
 - 5.5.4 that is pornographic or contains a link to pornographic material or websites;
 - 5.5.5 in which personal data of minors is requested and/or in which personal data of other people is made available;
 - 5.5.6 that promotes or facilitates illegal activities;
 - 5.5.7 that involves mass mailings, junk mail or spamming, or is intended for advertising, marketing, or other commercial purposes. To this end, Smart.pr monitors Customer's and Users' reputation scores, based on the email tracking pixel and recipients' click and unsubscribe behaviour, without substantively monitoring any User Generated Content (see Article 13);
 - 5.5.8 that relates to "phishing" and/or to the retrieving of passwords or any other confidential or sensitive information regarding the identification of persons, commercial purposes, illegal purposes, or any other purpose;
 - 5.5.9 that contains viruses, Trojan horses, worms, bots, or other software that can damage, render unusable or inaccessible, erase or misappropriate any automated work or data, or that is intended to circumvent technical protection measures of the Website and/or Smart.pr's computer systems;
 - 5.5.10 that violates any applicable law or regulation or any provision of these Terms, or that is otherwise unlawful.
- 5.6 If Smart.pr suspects that the User's use of the Services is not in accordance with these Terms, the Agreement and/or relevant laws and regulations, or if the User's behaviour is detrimental to any journalists involved, Smart.pr may suspend, terminate or otherwise limit the use of the Services or individual Features, without prejudice to its right to take further legal action and/or to claim compensation, and without refunding any payments made in advance.

6 Prices and Payment

- 6.1 Smart.pr and the Customer will include the applicable rates for the use of the Services in the Agreement. Separate (Features of the) Services can be purchased by the Customer at any time. In such cases, Smart.pr shall charge the corresponding prices proportionally to the remainder of the duration of the Services in question.
- 6.2 Except when explicitly stated otherwise, all stated prices are exclusive of VAT, any other government levies, and administration costs.
- 6.3 Smart.pr shall invoice in advance on an annual basis. Invoices shall be paid by the Customer within thirty days of the invoice date, except when agreed otherwise. The Customer shall not be entitled to setoff or suspend its payment.
- 6.4 If the Customer fails to pay the amounts due in a timely manner, the Customer shall owe statutory interest on the outstanding amount, without the need for any warning or notice of default and without prejudice to Smart.pr's rights stated in these Terms and/or under applicable law. If, after a warning or notice of default, the Customer remains in default of payment, Smart.pr can pass the claim for payment on for collection, in which case the Customer shall also be liable for all judicial and extrajudicial costs, including costs calculated by external experts in addition to any costs established in court. Besides, Smart.pr may also deny the Customer and Users access to the Services if payment is not made within the payment term.

6.5 Smart.pr reserves the right to alter the fees for the Services from time to time (for example, when new Features, functionalities or characteristics are added, or in connection with an inflation adjustment). Smart.pr will notify the Customer in advance of any fee changes, including the date on which such a fee change will take effect. If the Customer does not agree to any such adjustment, the Customer can express, within thirty days of the notification, its desire to terminate the Services by the date on which the adjustment will go into effect.

7 Intellectual Property

7.1 **Intellectual Property Rights** are all (present and future) intellectual property rights, worldwide, such as (but not limited to): copyrights, trademarks, trademark applications, trade names, company secrets, domain names, know-how, database rights, designs, design applications, patents, patent applications, or any similar property rights and processes.

7.2 Each Party retains ownership of their Intellectual Property Rights developed outside of or prior to the agreement of these Terms.

7.3 With the exception of Intellectual Property Rights vested in (the material contained in) the Mailings, Smart.pr – or, where applicable, its licensors – will at all times retain full ownership of all Intellectual Property Rights vested in, relating to or arising from (i) the (results of the) Services and (ii) all other products, services and information it offers to the User at any time, including but not limited to the Web Application and the Website.

7.4 Subject to these Terms, Smart.pr grants the User a limited, personal, revocable, non-exclusive, non (sub)licensable, non-transferable, right to use the Services.

7.5 For providing the Service and sending Mailings in particular, the Customer grants Smart.pr a free, worldwide, unencumbered, non-exclusive license to use, reproduce, distribute, and disclose Mailings.

7.6 It is strictly forbidden to reproduce, publish, modify, distribute, transfer, license, or otherwise use Smart.pr, the Website(s) and/or the Service (or any part thereof) for any direct or indirect commercial purpose or for any other purpose other than stated in these Terms.

7.7 It is not allowed to remove, obscure, conceal or alter any notice or statement relating to any Intellectual Property Rights.

8 Database

8.1 The collection of data and other information as offered via the Service, including but not limited to the Journalist Database and (results from) News, (each) constitute a database (hereinafter referred to as the **Database**), within the meaning of Article 1(a) of the Dutch Databases Act (*De Databankenwet*).

8.2 Smart.pr is the author (“producer”) of these Databases and therefore has the exclusive right to oppose to (i) the retrieval or reuse of the entire Databases or a qualitatively or quantitatively substantial part of their content and (ii) under certain conditions and in accordance with Article 3 of the Databases Act, to the repeated and systematic extraction or reuse of qualitatively or quantitatively insubstantial parts of the content of the Databases, insofar as this is in conflict with the normal operation of the Databases or causes unjustified damage to the legitimate interests of Smart.pr.

8.3 The User shall only request or reuse information from the Databases if and insofar as permitted under these Terms and the Databases Act.

9 Privacy and Data Protection

9.1 Within the context of (offering) its Services, Smart.pr processes certain personal data of the Customer. The use of such personal data by Smart.pr is described in the [Smart.pr Privacy Statement](#) which can be found on the Website. Regarding the processing of such personal data of the Customer, Smart.pr acts as a controller within the meaning of the General Data Protection Regulation (**GDPR**). For the mere compiling and maintaining of the Journalist Database in and of itself, Smart.pr also acts as a data controller.

9.2 Subsequently, the Customer processes personal data via the Service in various ways, whereby the Customer determines the purpose (i.e. doing PR) and the means (i.e. using the Service) of processing. Among other things, the Customer uses any contact from the Address Book (i.e. both Own Contacts and contacts from the Journalist Database), distributes Mailings, activates the email tracking pixel, or uses the News Feature. The Customer hereby acts as a data controller within the meaning of the GDPR.

9.3 Through its Services Smart.pr facilitates the processing as referred to in 9.2 for the benefit of the Customer. In this respect, Smart.pr acts as a data processor within the meaning of the GDPR and only processes these personal data on the instruction or request of the Customer. In this regard, the parties shall enter into a **Data Processing Agreement**, which is part of these Terms as Addendum 1.

10 Warranties and Maintenance

10.1 Smart.pr provides its Services ‘as is’ and on a *best effort* basis. The historical uptime of the Service is on average higher than 99%.

- 10.2 Smart.pr shall make all reasonable efforts to provide continuous access to the Services, but cannot guarantee this. Interruptions to the Services may occur, among other things but not exclusively, due to external internet or telephone connection failures or due to viruses, errors, or defects.
- 10.3 Smart.pr has no influence over the outcomes that result from the use of the Services by the Customer, such as the effectiveness of its PR or press relationship management, the use of Mailings, the Journalist Database and/or News by the User. Smart.pr can therefore give no warranties regarding any expectations the Customer may have when using the Services.
- 10.4 Smart.pr is entitled to, without prior notice and without being liable to the Customer for damages, temporarily suspend or limit the use of the Service in case this is necessary, for example in case of reasonably required maintenance. Smart.pr shall, if possible, announce such maintenance and perform it outside office hours.
- 10.5 Smart.pr is entitled to, without prior notice, make procedural and technical changes and/or improvements to the Services. Within the framework of product development and/or providing support for the Service, Smart.pr is permitted to, with the prior explicit consent of the User, log into the User's Account for the purpose of analysing the use and resolving any issues.

11 Liability

- 11.1 Smart.pr shall not be liable for any direct or indirect damages or costs incurred by the Customer or third parties as a result of:
 - 11.1.1 The use of the Services by the Customer and Users, including but not limited to damages or costs resulting from (1) the (unlawful) content of the Journalist Database, News, Mailings or User Generated Content, or (2) the use of all the various Features;
 - 11.1.2 Any (published) Mailing;
 - 11.1.3 Any action by a third party regarding a Mailing, for example in the event that the Customer or User distributes the Mailing to digital locations controlled by third parties, including social networks and other websites;
 - 11.1.4 Hacking, sabotage, or other unauthorized access or use of the Services or User's Account resulting from Customer's or User's fault or negligence;
 - 11.1.5 A failure to comply with Smart.pr's obligations under these Terms if such failure is due to events beyond Smart.pr's control (e.g. a network failure and temporary unavailability of the Services);
 - 11.1.6 Unavailability of the Services due to maintenance of the Services (as described in Article 10.4);
 - 11.1.7 Improper use of the Services by the Customer or User, e.g. not complying with these Terms.
- 11.2 Smart.pr shall otherwise only be liable for direct damages (and not for any indirect damages) and this liability is at all times limited per event (where a related series of events counts as a single event) to the amount of the fees (excluding VAT) as paid by the Customer to Smart.pr for the use of the Service in the current calendar year.
- 11.3 Nothing in these Terms shall exclude or limit Smart.pr's liability where it cannot be excluded or limited under applicable law.

12 Indemnification

- 12.1 To the extent permitted by law, the Customer shall indemnify and hold Smart.pr harmless against and from all liabilities, damages, losses and costs (including settlement costs, reasonable attorneys' fees and costs of complying with any request, order or judgment) arising from claims by third parties who suffer damages as a result of the execution of the Agreement or the use of the Services by the Customer or the User, unless the cause is clearly and directly attributable to Smart.pr.
- 12.2 The Customer also indemnifies Smart.pr from all third party claims related to (the content of) the data collected, distributed, or processed by the Customer or User through all our Services, including any personal data collected, used and/or processed by the Customer or User within the meaning of the GDPR.
- 12.3 In the event that third parties make a claim against Smart.pr, the Customer shall assist Smart.pr both in and out of court, and shall do everything that can be expected from her on the basis of this Article 12.

13 User Generated Content

- 13.1 Any content added, created, uploaded, imported, submitted, distributed, posted, or otherwise obtained by the Customer or User through the Web Application, including but not limited to Own Contacts, Press Lists, Address Book, and Mailings, is collectively referred to as **User Generated Content**.
- 13.2 The Customer has and retains ownership of and any rights to the User Generated Content generated by that Customer within the Services.

13.3 Smart.pr does not actively monitor, screen and/or edit the User Generated Content within the Web Application. If the User notices or is informed that any User Generated Content violates applicable legal and regulatory provisions, especially in the case of clearly illegal content (e.g. defamatory or derogatory content or content which infringes on intellectual property), the User shall notify Smart.pr immediately by sending a Notice-and-Take-Down request to info@smart.pr or by calling +31 20 751 66 29. The User shall provide all information necessary to identify the User Generated Content and take further action.

13.4 Smart.pr has the right to remove and/or block User Generated Content in response to a Notice-and-Take-Down request it receives, without being obligated to state the reasons to do so.

14 Term and Termination

14.1 The Agreement for the use of the Services has a term of one year after its conclusion, unless agreed otherwise. After expiry of the initial term, the Agreement will be entered into for a further period of one year each time (unless agreed otherwise) by means of a new Offer, unless either Party cancels the Agreement in writing and subject to a notice period of at least one month before the expiry of the (initial or extended) term, and the subscription thereby expires by the end date of the Agreement.

14.2 In the event of force majeure on the part of Smart.pr, Smart.pr shall be entitled either to suspend the execution of this Agreement, or to terminate this Agreement in whole or in part.

14.3 Either Party may terminate the Agreement with immediate effect, without any notice being required and without being liable for any damages resulting from the termination, in the event the other Party:

14.3.1 is dissolved or liquidated, or is in a state of dissolution or liquidation;

14.3.2 has been granted a moratorium or has been declared bankrupt;

14.3.3 is placed under guardianship or dies; or

14.3.4 can no longer freely dispose of its assets due to other circumstances.

14.4 Smart.pr may terminate or dissolve the Agreement directly, without any notice of default being required, if the Customer fails to comply with its obligations under the Agreement or fails to do so in full or on time. In such cases, the Customer shall indemnify Smart.pr and/or reimburse any costs incurred.

14.5 Upon termination of the Agreement, Smart.pr will cancel the Customer's and User's access to the Services. In this case, Smart.pr will delete the Account and User Generated Content. Own Contacts are shared with the Customer and/or kept for her as described in the Data Processing Agreement. Any potential enrichments from our Journalist Database to Own Contacts, which have occurred during the use of the Web Application (e.g. during imports of Own Contacts), remain the explicit ownership of Smart.pr.

15 Miscellaneous

15.1 The Agreement (of which these Terms are a part) replaces all previous agreements between the Parties.

15.2 Smart.pr may amend these Terms during the term of the Agreement, to the extent permitted under applicable law. In case of significant substantive changes, the Customer shall be informed of the amended Terms.

15.3 Smart.pr can transfer rights and obligations arising from these Terms to third parties and shall inform the Customer accordingly. In case the Customer does not find this transfer of obligations to a third party acceptable, the Customer can terminate the Agreement towards the end of the contract period with due observance of the notice period.

15.4 If any provision of these Terms and/or the Agreement is found to be unlawful, void, voidable or otherwise unenforceable, this shall not affect the validity and enforceability of the remaining provisions of these Terms and the Agreement. The unlawful, void, voidable or otherwise unenforceable part shall be (deemed to be) replaced by a valid and enforceable provision that most closely approximates the purpose and intent of the replaced provision.

15.5 The Agreement and the rights and obligations arising from it are governed by Dutch law. Any disputes shall be submitted exclusively to the competent court in Amsterdam.

Addendum 1 – Data Processing Agreement

This Data Processing Agreement applies to the processing of Personal Data by Smart.pr and the Customer in the context of the Services as described in the Agreement, with Smart.pr acting as the Data Processor and the Customer as the Data Controller.

1. GDPR Role Distribution

- 1.1. The Customer determines the purpose and means for its processing of Personal Data within the environment of the Smart.pr Web Application. The Customer therefore acts as a **Controller** within the meaning of the GDPR.
- 1.2. Smart.pr B.V. is the **Processor** within the meaning of the GDPR of the Personal Data it processes in the Smart.pr Web Application on behalf of the Customer. This Data Processing Agreement does not relate to any Personal Data for which Smart.pr itself acts as a Controller (for example, when processing Personal Data of the Customer for billing and support purposes).

2. Definitions

- 2.1. In this Data Processing Agreement, the following definitions are capitalized. Other terms starting with a capital letter have the meaning ascribed to them by the GDPR or as defined in the Agreement.
 - A. **GDPR** | The General Data Protection Regulation (EU Regulation 2016/679) and all related and applicable national implementation legislation.
 - B. **Non-Adequate Country** | A country that is not considered to provide an adequate level of protection for Personal Data within the meaning of Art. 45 GDPR.
 - C. **Personal Data** | All information about an identified or identifiable natural person that is processed by Smart.pr on behalf of the Customer under the Agreement.
 - D. **Data Breach** | An incident involving Personal Data as defined in Art. 4 (12) GDPR.
 - E. **Sub-Processor** | Any third party engaged by Smart.pr to execute (part of) the Processing of Personal Data on behalf of the Customer.

3. Processing Description

- 3.1. The specifications of the processing of Personal Data, including the categories of Personal Data and Data Subjects, are set out in Annex A.
- 3.2. The term of this Data Processing Agreement is the same as that of the Agreement. Regardless of the term of this Data Processing Agreement, Smart.pr shall comply with the provisions herein for as long as Personal Data are processed by Smart.pr on behalf of the Customer.

4. Instructions

- 4.1. Smart.pr shall only process the Personal Data (i) on behalf of the Customer, (ii) in accordance with the Customer's written instructions, including the Customer's actions in the Smart.pr Web Application and (iii) for the authorized purposes pursuant to the Agreement, this Data Processing Agreement, or any other instructions from the Customer. Smart.pr shall comply with the GDPR in doing so.
- 4.2. Furthermore, Smart.pr shall only process the Personal Data when this is required under applicable EU law or the law of an EU Member State. In that case, Smart.pr shall inform the Customer before the processing takes place, except when that law prohibits such information on compelling grounds of public interest.
- 4.3. Smart.pr shall immediately inform the Customer if Smart.pr believes that an instruction violates the GDPR or if Smart.pr can no longer comply with this Data Processing Agreement or the GDPR.

5. Security and Confidentiality

- 5.1. Smart.pr shall implement and maintain appropriate technical and organizational measures (**TOMs**) to prevent accidental or unlawful destruction, loss, alteration, or unauthorized disclosure of or access to Personal Data. In these TOMs, the state of the technology, the costs of the implementation and the nature, scope, context, and purposes of the processing under the Agreement, as well as the risk of likelihood and severity regarding the rights and freedoms of Data Subjects, are taken into account. These TOMs are further described in Annex B. Smart.pr may modify and/or update these TOMs in due time, while maintaining the same or increasing the level of security.
- 5.2. Smart.pr shall ensure that any employee or other person working under its direct authority is bound to respect and maintain the confidentiality of Personal Data.

6. Sub-Processors

- 6.1. Smart.pr engages Sub-Processors when processing Personal Data. These Sub-Processors only process Personal Data in accordance with Smart.pr's written instructions and not for their own purposes. Smart.pr shall ensure that each Sub-Processor is contractually bound by obligations that provide the same level of protection of Personal Data as is imposed on Smart.pr in this Data Processing Agreement. Annex C contains an overview of the Sub-Processors engaged, to which the Customer hereby consents.
- 6.2. Smart.pr shall notify the Customer of any proposed changes or additions to its Sub-Processors (for example, to improve the Service), giving the Customer the opportunity to object to such changes on reasonable data protection grounds.

- 6.3. Smart.pr shall remain liable to the Customer for the execution of the Data Processing Agreement by each Sub-Processor, with observance of Article 13.2 of this Data Processing Agreement.

7. Controller Support

- 7.1. Smart.pr shall promptly and adequately respond to reasonable requests from the Customer for cooperation and assistance, in case Data Subjects wish to exercise their rights of access, rectification, erasure, restriction, or data portability.
- 7.2. Smart.pr shall cooperate with and provide assistance to the Customer, in case the Customer makes a reasonable request regarding its data protection impact assessment ("DPIA") and preceding consultation obligations under the GDPR.

8. Data Breaches

- 8.1. Smart.pr shall inform the Customer without undue delay if it becomes aware of a Data Breach. This information shall be provided to the Customer at the contact details known to Smart.pr.
- 8.2. If the Customer becomes aware of a Data Breach that relates to Processor's Services, she shall notify Smart.pr no later than within 24 hours by emailing to info@smart.pr and by calling telephone number +31 20 751 66 29.
- 8.3. In the event of a Data Breach, Smart.pr shall take appropriate remedial action without undue delay. In addition, Smart.pr shall provide all information and assistance as reasonably requested by the Customer in relation to the Data Breach.

9. Return and Destruction of Personal Data

Immediately upon termination of the Agreement, the Customer may request Smart.pr to return its Own Contacts and to delete copies of associated Personal Data, excluding the Personal Data owned by Smart.pr (such as any enrichments from the Journalist Database). After the termination of the Agreement, Smart.pr shall retain all data for 3 months standard. This retention period can be extended up to 2 years at the written request of the Customer, for the sole purpose of the Customer returning to Smart.pr at a later date. Once the agreed term has expired, Smart.pr shall immediately and permanently delete all Personal Data of Customer's Own Contacts and all copies thereof.

10. Audits and Controls

- 10.1. Smart.pr shall make available to the Customer any information necessary to demonstrate compliance with its obligations under this Data Processing Agreement.
- 10.2. Smart.pr shall cooperate with independent external audits and inspections at the Customer's request, in order to demonstrate compliance with this Data Processing Agreement.
- 10.3. Audits will take place at most once per year and will be announced at least 15 business days in advance. The Parties shall jointly determine the scope of the audit, taking into account the limited processing of Personal Data under this Data Processing Agreement and the, as a result hereof, relatively low risks in terms of Personal Data protection. The costs of the audit shall be borne by the Party requesting the audit.

11. International Transfer

Smart.pr transfers Personal Data to countries and/or parties as listed in Annex C and works with parties within the EU as much as possible. When transferring data outside of the EU, Smart.pr takes into account the relevant legislation (Chapter 5 GDPR) as much as possible, including entering into the necessary agreements with and performing Data Transfer Impact Assessments on the Sub-Processors.

12. Miscellaneous

If any provision of the Data Processing Agreement conflicts with one or more provisions of the Agreement, the provision of the Data Processing Agreement prevails.

13. Liability

- 13.1. Smart.pr shall only be liable for damage caused by (i) failure to comply with the legal obligations in the GDPR directly addressed to Processors, or (ii) failure to comply with the arrangements set out in this Data Processing Agreement. Smart.pr shall not be liable for damages arising from following instructions from the Controller that are unlawful or that are in violation of the GDPR.
- 13.2. If Smart.pr is liable under Article 13.1, its total liability shall be limited to the amount paid out by Smart.pr's insurance company in the relevant case and for the relevant damages incurred by the Customer. Smart.pr has a cyber risk insurance in place that covers a maximum amount of €500,000 per incident and a maximum of €500,000 per insurance year.

Annex A – Data Processing Specifications

A. Subject Matter

The subject matter of this Data Processing Agreement is the processing of Personal Data in the context of the Services under the Agreement, on behalf of and in line with the written instructions of the Customer.

B. Nature of the Processing

The processing of the Personal Data that the Customer as a Data Controller can, via the Services, carry out under her own responsibility consists of, among other things, importing press lists, manually adding Own Contacts, searching for and using journalists from the Journalist Database, making notes on contacts, creating and sending Press Releases, viewing analyses of sent Press Releases on the basis of the email tracking pixel that Users can turn on or off themselves, and searching and/or following authors, news and/or journalistic publications via News.

The nature of the processing as carried out by Smart.pr in this context includes, among other things, the collection, storage, structuring, analysis, online retrieval, and deletion of Personal Data on behalf of the Customer.

C. Categories of Data Subjects

The persons to whom the Personal Data relate are persons who, among other things, are the recipients of or are mentioned in a sent Press Release. This may include, for example, the following persons:

- Journalists, either freelance or employed by a medium;
- Editors and editorial departments;
- Social media influencers;
- Opinionators and columnists;
- Copywriters, content creators/directors and other publicists;
- Other people working in any way in (social) media, journalism, or press.

D. Types of Personal Data

The Personal Data that can be processed by Smart.pr depend on the Personal Data that the Customer processes through the Services. Because these Personal Data are processed in the execution of the (public) occupations of PR professional and journalist, these data are of a professional nature and therefore often stem from public sources. These may include for example the following occupational (Personal) data:

- First name, last name
- Gender
- Email address (professional)
- Phone number (professional)
- Address details (professional)
- Employers/media
- Job description
- Interests/specializations/editorial department(s)
- URLs of blogs, social media
- Publication region(s)
- Content of the Press Releases sent
- Notes on contacts
- Email tracking pixel & click-rates on sent Mailings

E. Purposes

Smart.pr processes Personal Data in order to execute the activities as agreed in the Agreement.

Annex B – Technical and Organizational Measures (TOMs)

A. Hosting & Firewalls

- Use of a Virtual Private Server provider to host applications and databases. The provider in question takes adequate security measures;
- A firewall is used on all individual hosts to prevent unauthorized access to personal data;
- Intrusion prevention methods are used on all hosts to prevent brute-force attacks;
- Use of an external storage service to store user files. This service is located within the EU and takes adequate security measures;
- Application of “system hardening” on all hosts. This includes strong password authentication, removal of unused accounts, disabling unused ports, and log management;
- All hosting (including external services) is located within the EU and is subject to the GDPR.

B. Backup, Data Restoration, and Incident Management

- A full, encrypted backup of all databases is made every day, and copies are made automatically. Furthermore, point in time recovery (PITR) is also possible;
- Backups are stored with an external storage service;
- Smart.pr B.V. uses internal protocols and organizational measures for incident management.

C. Change Management & Documentation

- Change management processes are used for all system components that process Personal Data;
- There is internal documentation on system architecture and system security, and on relevant processes regarding the Web Application;
- All updates and/or changes are extensively tested on separate test environments before implementation;
- There are automated logs on system activities of all employees of Smart.pr who have access to Personal Data.

D. Patch Management

- Patch management is performed on hosts and applications that process Personal Data;
- When technically possible, Smart.pr B.V. applies relevant patches regarding its systems’ security, within 30 days after taking notice.

E. Authentication & Authorization

- Users can only access the Smart.pr Web Application with a unique combination of username and password (which must meet specific safety requirements);
- Smart.pr employees have restrictive access to systems based on the "least privilege principle";
- Employees are strongly advised to use multi-factor authentication and there is a strict password policy;
- Access to systems and managed data is only possible with public key infrastructure (PKI).

F. Encryption

- Saved backups are encrypted. Also, the communication between hosts when backups are moved is encrypted;
- Data traffic including Personal Data is encrypted.

G. Organizational Measures

- Smart.pr B.V. ensures that all employees are aware of the security policies in use;
- Employees with access to Personal Data are subject to an internal "Code of Conduct" to remind them of the confidential nature of their work. There are also periodic training sessions regarding privacy and Personal Data;
- Smart.pr B.V.'s employment contracts with its staff include a confidentiality clause;
- Subcontractors and consultants are bound by contractual provisions regarding privacy and the protection of Personal Data via Data Processing Agreements;
- There is a careful workflow regarding the entry and exit of employees with access to Personal Data, whereby access to data is immediately denied upon leaving employment;
- Adequate provisions have been made for the physical security of the workplace;
- Users of Smart.pr also accept a Code of Conduct to guide their handling of Personal Data upon their first login.

Annex C – Sub-Processors

The Sub-Processors engaged by Smart.pr pursuant to Article 6 are (A-Z):

Name Sub-Processor	Description	Location of Processing	Safeguards Inadequate Countries
Amazon Web Services Inc.	Hosting service, used for hosting encrypted backups.	EU – Germany and Ireland	N/A
Bee Content Design Inc.	Produces the Pro email editor, a service that is used for the creation of Press Releases. Only has access to Personal Data when these are included in the content of the Press Release.	EU – Ireland	N/A
OpenAI, LLC	Service used for generating embeddings, with which we suggest relevant journalists. Only has access to Personal Data when these are included in the content of the Press Release. To provide this service we make use of the OpenAI API Platform. This professional service is subject to OpenAI's Enterprise privacy standards, see: https://openai.com/enterprise-privacy	United States	N/A
Sendgrid Inc.	Email Service Provider, required for the distribution of Press Releases via email. Once the Customer sends the Press Release, Sendgrid has access to the final Press Release, plus the names and email addresses of the journalists to which the Press Release is sent. Certified organisation under the EU-U.S. Data Privacy Framework, see: https://www.dataprivacyframework.gov/s/	United States	N/A
TransIP B.V.	Hosting Company, used to host the Web Application and related Personal Data.	EU – Netherlands	N/A
Transloadit Ltd.	Service to enable the encrypted communication of attachments, including photos and pdf files, from Press Releases to Amazon's servers.	EU – Germany	N/A