

## Preamble

Shopsuite (Shopsuite B.V. a Dutch private limited liability company and a 100% daughter company of Odyssey B.V.) owns and operates <https://dashboard.shopsuite.com> and any mobile, touch or affiliated websites or applications we may have now or in the future that refer to these Standard Terms of Service (collectively, “the Service”).

Shopsuite operates the Service to provide a sales-generation and information-sharing platform and related technology services to products and services owners “Brands” and Publishers/Affiliates wishing to create positive content related to Brand’s products and services. In addition, Shopsuite uses web-based software called “Odyssey” and “Artemis”, also owned and operated by Odyssey B.V.. Odyssey determines for the website visits in the customer journey to what extent they have contributed to a sale. Artemis is click tracking software. (the Services)

Individuals who use the Site are Users, and you and your refer to Users. If you access the Site or accept these Standard Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that legal entity and, in such event, you and your will refer to that legal entity. We, us, or our refer to Shopsuite. In addition, in these Terms, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice-versa.

These Shopsuite Standard Terms of Service (‘Agreement’), constitute a legal agreement between Shopsuite B.V. and the entity executing this Agreement (“You”). This Agreement governs your use of the Software and Cloud Service (as defined below). By clicking the “I Accept” button, completing the registration process, or using the service, you agree to all terms and conditions of this Agreement. In consideration of the foregoing, the parties agree as follows:

## Article 1. DEFINITIONS

The following definitions are applicable to the Agreement, including all its associated Annexes:

**Affiliates/Publishers:** any entity, individual, firm, or corporation that wishes to create positive content related to Brand’s products and services and joins Brand’s affiliate program.

**Affiliate program:** a commercial relationship between a Brand and an Affiliate in which the Affiliate may be paid per action by Brand. As specified in a separate agreement between Brand and Affiliate.

**Agreement/ Standard Terms of Service:** the present Agreement/Standard Terms of Service, clauses 1-21 and Annex 1; the Data Processing Agreement, Annex 2; Amazon server agreement, Annex 3; The Commercial Terms, any applicable Statements of Work, and any other attachments hereto, all of which are incorporated by reference, and as may be modified, amended, or supplemented from time to time. In case of discrepancies between the provisions of this Agreement and any Annex and/or attachment(s), the stipulations of this Agreement prevail.

**Artemis:** Shopsuite’ own click tracking software that can be used by brands and publishers in case they have agreed on a Cost-per-Click (CPC) deal and they don’t want to use the default

tracking software based on Brand's Odyssey Attribution account. The Artemis click tracking software is particularly used in the case Brand doesn't have an Odyssey Attribution account / subscription. Artemis software is installed on a Property for the purpose of collecting Data, together with any backup script, fixes, updates and upgrades provided to You. Artemis collects on a daily basis the strictly necessary Data, uploads this Data into the Application/Odyssey/Shopsuite on an external server, with or without Google Analytics. Shopsuite is not responsible nor liable for Google Analytics. Parties acknowledge that Shopsuite's obligations towards You with regard to Google Analytics can never exceed Google's obligations towards Shopsuite or You.

**Brand:** Products and services owners.

**Cloud Service:** the rendering and keeping available of Shopsuite by Shopsuite B.V., against payment, for You, on an external Server from Amazon. The Agreement with Amazon is attached to the present agreement in Annex 2. Parties acknowledge that by inserting the Amazon agreement, Shopsuite B.V. obligations towards You regarding the server can never exceed Amazon's obligations towards Shopsuite B.V.

**Cost Per Click:** a method to bill based on the number of times a customer/visitor clicks on an advertisement.

**Data/Information:** means the Data inputted into/onto Shopsuite by You, Your authorised users or Shopsuite on behalf of You for the purpose of using Shopsuite. Also means The Data inputted into Odyssey using Your Google Analytics 360 account via Big Query or via Google Analytics Free account with Artemis or without Google Analytics with Artemis.

**Documentation:** means any accompanying documentation made available to You by Shopsuite for use with the Application and software, including any documentation available online.

**Interface:** a Tool, being a communication link between Shopsuite and systems within the domain of You and those of Shopsuite.

**Means of Access:** by way of a combination of a user name and a password, access to Shopsuite can be obtained.

**Shopsuite/the Service:** The Service is an online platform, including other services as mentioned in Definitions, such as but not limited to: "Artemis" and "Odyssey", that is intended to be used to facilitate Brands and Affiliates connecting and entering into agreements directly with each other. Brands and Affiliates may create an account on the Platform. Through the Platform Brands may invite Affiliates to their Affiliate program and Affiliates may ask the Brand to join Brand's Affiliate program. After accepting these Standard Terms of Service, Brands and Affiliates may enter into agreements directly with each other with regard to Brand's Affiliate program. You understand and agree that Shopsuite is not a party to any agreements entered into between Brands and Affiliates. Shopsuite has no control over the conduct of Brands, Affiliates, and other users of the Service, and disclaims all liability in this regard to the maximum extent permitted by law. Shopsuite uses web-based software called "Odyssey", also owned and operated by Odyssey B.V., that analyses the customer journey. Odyssey is a software module made available via the internet in the form of various cloud services by Odyssey B.V. Odyssey calculates what the

commission could be that Brand may pay to the Affiliate that sends visitors to the website of Brand. In order to do so, website traffic from the past is considered, and website visits from the entire customer journey are measured. Through the application of Key Performance Indicators and a formula, Odyssey calculates a 'suggested commission' for all traffic sources that does not limit itself, however, to all the affiliates/partners. Unique to Odyssey is that it considers the website visits throughout the entire customer journey, in combination with the use of certain Key Performance Indicators (customer journey length, density & position) and a formula (algorithms). This allows Odyssey to determine for the website visits in the customer journey to what extent they have contributed to a sale. In this Agreement 'Shopsuite' and 'Odyssey' may be interchangeable.

**Personal Data:** any information controlled by You or any of Your affiliated companies which relates to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

**Portal:** the internet site where You can use Shopsuite.

**Property:** means any website, app, or other property under Your control that sends data to Shopsuite.

**Suggested commission:** the commission calculated by Odyssey which may be payable to the Affiliates/Publisher of Brand. The decision regarding what amount of commission will be paid to the Affiliates/Publisher, is left to the discretion of Brand, on which occasion human judgement will be decisive and emphatically not the suggested commission calculated by Shopsuite. No rights or claims can be derived from the suggested commission calculated by Shopsuite.

## **Article 2. ASSIGNMENT**

1. You confer Shopsuite the assignment to provide Cloud services. These Cloud services consist of:
  1. Making available to You for the duration of this Agreement Shopsuite and its range of functionalities as well as the scope of storage capacity and other services as mentioned in Definitions, such as but not limited to: "Artemis" and "Odyssey";
  2. The conferral of the non-exclusive right to You to use Shopsuite for Your website for the Data inputted by You, pursuant to the provisions of the present Agreement.
  3. The conferral of the non-exclusive right to You to use Odyssey for Your website through the Portal, pursuant to the provisions of the present Agreement;
  4. The conferral to You of a user's right for the Interface;
  5. The provision of technical assistance to the Users, as further described in the articles below; and
  6. The provision of additional services to You by Shopsuite on request, such as, though not limited to: consultancy, the training of staff, development of an interface, or a modification to it. Parties will adopt a separate assignment agreement for these additional services.

2. Point of delivery for Shopsuite/Odyssey and the generated user data shall be the router exit of Shopsuite' data centre (Amazon). Shopsuite shall not be responsible for the telecommunication connection between You and the point of delivery.
3. Shopsuite is not obliged to dispose of a back-up centre or other back-up facilities for the implementation of Shopsuite.
4. Shopsuite is not obliged to create reserve copies (back-ups) of the information stored by You on using Shopsuite.
5. Shopsuite warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under this Agreement.

### **Article 3. NON-EXCLUSIVE LICENSE**

1. Subject to the terms and conditions of this Agreement, (a) Shopsuite/Odyssey grants You a limited, revocable, non-exclusive, non-sublicensable license to use Shopsuite/Odyssey/Artemis solely as necessary for You to use the Service on Your Properties or Third Party's Properties; and (b) You may remotely access, view and download Your Reports stored at <https://dashboard.shopsuite.com>. You will not (and You will not allow any third party to) (i) copy, modify, adapt, translate or otherwise create derivative works of the software or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the software, (iii) rent, lease, sell, assign or otherwise transfer rights in or to the software, the Documentation or the Service; (iv) remove any proprietary notices or labels on the software or placed by the Application/Service; (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Application/Service or the software; or (vi) use data labelled as belonging to a third party in the Application/Service for purposes other than generating, viewing, and downloading Reports. You will comply with all applicable laws and regulations in Your use of and access to the Documentation, software, Service and Reports.

### **Article 4. ABOUT THE SERVICE; REGISTRATION**

1. The Service allows Users to access information, and provides opportunities for Brands and Affiliates to initiate the registration process, request a proposal, respond to a proposal, enter into an agreement, or engage with Shopsuite through provided communication options.
2. To access and use the Services, you must register an account (User Account) using an email address.  
To create a User Account by using your email address, follow the prompts on the Site. You agree to provide accurate, current and complete information during registration and to update such information to keep it accurate, current and complete. You agree that you will safeguard your password and that you are solely responsible for any activities or actions under your User Account, whether or not you have authorized such activities or actions. You will immediately notify us of any unauthorized use of your User Account. You are solely responsible for your Content (defined below) and User Account.

3. Whether you are a Brand, Affiliate, or other User, you acknowledge and agree that you are solely responsible for your User Account and all User Account information. You represent and warrant that any User Account information that you post, and any agreements you enter into with other Users (i) will not breach any agreements you have entered into with any third parties and (ii) will (a) comply with all applicable laws, tax requirements, licenses, rules and regulations that may apply to you and (b) not conflict with the rights of third parties.

## **Article 5. SERVICE PROCESS; FEES**

1. Users may use the Services to offer and accept opportunities to participate in a Brands Affiliate program. Brands may control which Affiliates are allowed to see and/or accept a proposal for a Brands Affiliate program.  
When two Users decide to enter into an agreement with each other, we will share information with each User as necessary or requested, such as (i) contact information, (ii) links to the other Users profile. (iii) details of the Brand, Affiliates, and/or Brands Affiliate program (including program requirements).
2. Users may enter into agreements with each other through the Services by following the prompts to establish all desired terms and mutual acceptance of the agreed terms.  
When an agreement between Users is confirmed, we will send each User a message confirming such agreement. The message may be sent by in-application push message, posting to your account or Dashboard, email, and/or text message.
3. Brands can set monthly budgets per affiliate, this means that affiliates won't be paid more in a particular month than this set budget. The set budget needs to be agreed between brand and affiliate and will be added as an addendum to the existing contract.
4. Shopsuite uses web-based software called "Odyssey", owned and operated by Odyssey B.V., that analyses the customer journey. The objective is to determine for the website visits in the customer journey to what extent they have contributed to a sale.
5. In consideration of the Services, we receive from a Brand a fee (the Service Fee) in exchange for providing Brands access to the Services, including the results generated by Shopsuite.
6. By using Shopsuite Brands will determine what the commission could be that Brand may pay to the affiliate that sends visitors to the website of Brand. The analysis of the customer journey by Shopsuite is binding to all parties involved. Affiliates will only receive basic information about the incremental contribution that they had to a Sale. Affiliates may use this information to improve their incremental contribution to a Sale. Affiliates have no right to any other functionalities, results or information generated by Shopsuite.
7. In case of an agreement between Brand and Publisher on a Cost per Click (CPC) basis, Brand can decide to use Artemis instead of the default tracking based on the Odyssey Attribution account of Brand, in order to track the amount of clicks generated by the publisher and pay the publisher accordingly.
8. All calculations and/or metrics relating to any Sale shall be determined exclusively by Shopsuite log files, tracking codes, accounting information and inputted Sales data by the Brand, as applicable, and shall be determined in good faith by Shopsuite in accordance with the terms of this Agreement. Shopsuite is not responsible for the Data inputted by the Brand. Shopsuite will promptly provide such calculations to the Brand upon request,

and any such other information or materials as may be reasonably requested by the Brand to confirm the calculations and metrics referenced in the foregoing sentence.

9. Shopsuite has integrated Stripe Connect, software services that enable payment processing and related functions for multi-sided marketplaces and other electronic commerce platforms. All payments between the Brand and Affiliates take place via Stripe. Affiliates will create a Stripe Account. Stripe has a direct contractual relationship with Affiliates. Stripe provides Services directly to Affiliates.
10. You shall be responsible for payment of all taxes, duties, governmental charges and other like charges levied on the fees that are related to your income, and you shall indemnify, defend and hold Shopsuite harmless from and against any claims arising out or relating to all charges emanating from your non-payment of any such taxes, duties, governmental charges or other like charges related to your income.
11. All Parties shall carry and pay all their respective costs, charges and expenses incurred by it in the performance of this Agreement, except as otherwise may be agreed-upon by the Parties in writing in advance.

## **Article 6.1 AVAILABILITY**

1. Shopsuite shall monitor the functionalities, availability and performance of Shopsuite on a daily basis. Shopsuite will administer reasonable skill and care to keep Shopsuite functioning properly, in accordance with up to date recognized industry standards, and aims for an elevated availability, quality, and security of Shopsuite. Shopsuite does not guarantee, however, that Shopsuite will always function without any errors, Defects, Failures, or Outage.
2. Shopsuite may provide updates and upgrades to intermediately modify the technical and functional characteristics of Shopsuite with the purpose of improving the functionality, and of complying with the applicable legislation and regulations.
3. In case You have reason to believe that Shopsuite suffers an error, Defect, Failure or Outage, You shall notify Shopsuite as soon as reasonably possible. You are not entitled to fix an Error, Defect, Failure or Outage. Shopsuite will exert itself to identify and resolve any possible errors in Shopsuite as soon as reasonably possible in accordance with the technical possibilities.
4. Shopsuite reserves itself the right to temporarily deactivate Shopsuite for the purpose of, for example, maintenance, modification or improvement of the computer systems of Shopsuite. Shopsuite will let such decommissioning transpire as much as possible outside office hours and will timely inform You in advance of the planned decommissioning. Such a pre-announced decommissioning of Shopsuite can in no event be considered a shortcoming on the part of Shopsuite regarding the fulfilment of its commitments towards You.

## **Article 6.2. AVAILABILITY ARTEMIS**

1. When brands and publishers have agreed on a Cost-per-Click (CPC) deal and they opted for Artemis, the registration of Clicks is of fundamental importance. Article 6.1. also applies to Artemis. In addition to Article 6.1. the following applies.

2. Specific Artemis links are placed by the publisher and used for directing to the brand's website and for tracking.
3. Publishers may place a backup script on their website. In case Artemis does not function, customers will not notice the malfunction and can click on (backup)links that will direct them to the brand's website.
4. These (backup)links can not register clicks. To ensure continuity and to prevent loss of income, Shopsuite will place clicks for the exact duration of non registration of clicks, based on historical Artemis data according to the following schedule;
  - A. The average number of clicks for this specific publisher and brand and for the specific period (for example between 10 AM and 11 AM) in the seven days before the event;
  - B. In the case insufficient data is available for A, the average number of clicks for this specific publisher and other brands for the specific period (for example between 10 AM and 11 AM) in the seven days before the event;
  - C. In the case insufficient data is available for A and B, the average number of clicks for all other Users (brands and publishers) for the specific period (for example between 10 AM and 11 AM) in the seven days before the event;
  - D. In the case brand does not agree with the process or the result of A, B, or C, brand may give Shopsuite access to its Google Analytics account. Shopsuite will then determine the number of clicks for the exact duration of non registration according to brand's Google Analytics account.
  - E. The result of A, B, C or D is binding for all parties.

## **Article 7. TOOLS**

1. You are responsible for having at Your disposal and for the functioning of the Tools which are necessary for the use of Shopsuite, including the (ancillary) devices and software, supporting applications, configuration, and internet connection which are compliant with the technical and functional specifications as mentioned by Shopsuite.
2. You are responsible for maintaining a connection to the power grid and other connections which are necessary for the access to and use of Shopsuite.
3. Additional (licensing) conditions (of third parties) may apply to the use of the supporting applications. Shopsuite does not guarantee the full functionality of the supporting applications used by You.

## **Article 8. ACCESS TO THE SERVICE**

1. You are responsible for any use, with or without its approval, of Shopsuite, and for the Means of Access made available to You. Shopsuite is not liable for damage to You and/or third parties that has occurred as a result of the unauthorised use of the Means of Access.
2. The Means of Access provided are not transferable, strictly personal, and exclusively intended for use within Your organisation. You will observe the required care with regard to the use of the Means of Access, and will keep them secret from third parties.

3. You will inform Shopsuite forthwith in the event the Means of Access are being used without authorisation, or in case You have a reasonable suspicion of this being the case.
4. You can request Shopsuite to block the Means of Access. Shopsuite also has the right at all times to block the Means of Access on their own initiative if Shopsuite is aware of unauthorised use of the Means of Access. In such case Shopsuite is not liable for damage to You and/or third parties that has occurred due to the blocking of the Means of Access.

## **Article 9. USE OF Shopsuite**

1. On using Shopsuite, You will at least guarantee that You and the User(s), to the extent relevant, will observe the following rules:
  1. You agree not to store any illegal content or content which violates applicable law, or material rights of third parties within the provided storage space.
  2. You are obliged to prevent unauthorized access of third parties to Shopsuite and to use the Services with reasonable precautions.
  3. You will take care of the protection of your (ancillary) devices, software, infrastructure, and the internet connection against viruses, cybercrime, and (other) illegitimate use by User(s) or third parties;
  4. when using Shopsuite, You and/or User will not spread any (computer) viruses or other files which may harm (the proper functioning of) Shopsuite. You are obliged to scan its Data and the content for viruses and other harmful components before storing them on the server and to use appropriate virus protection programs;
  5. You and/or User will not engage (nor cause engagement) in any action that may cause disturbances of Shopsuite, (computer) networks, or infrastructures (of other users), or with regard to which disturbances, limited use, or unforeseen use (for other users) may be caused;
  6. You and/or User will not send big quantities of unsolicited messages with the same, or comparable, content ("spam");
  7. You and/or User will not abuse any Means of Access, nor breach the security of Shopsuite neither/nor try to breach it;
  8. You and/or User will not carry out, nor refrain from carrying out, any actions that it knows, or should reasonably have known, that may lead to use of Shopsuite which is punishable or illegitimate towards Shopsuite and/or third parties;
  9. You and/or User will not enter the computer system or a part of it intentionally and without permission, against the will of the owner or administrator ("hacking");
  10. You and/or User will in no way violate the intellectual property rights of Shopsuite and/or third parties; and
  11. You and/or User will not disclose information and data which Shopsuite provides within the framework of Shopsuite without the explicit written consent of Shopsuite, nor multiply or use it in any other way than in the context of the internal business operations of You.
2. In case You and/or User(s) act in violation of one or more of the aforementioned rules, You are obligated to follow the reasonable instructions given by Shopsuite with regard to it, and to have them followed by the User(s).

3. If Data that are stored, edited, processed, or otherwise entered with the aid of Shopsuite, are illegitimate towards third parties, Shopsuite has the right to remove (or have removed) these data immediately, without prior notice, from the Server, and to destroy them (or have them destroyed). Shopsuite will in no event be liable for any damage resulting from these actions.
4. Shopsuite can impede Access to Shopsuite by decommissioning the Means of Access, or by suspending the provision of services, if it has a serious suspicion that it is being used in violation of what is stipulated in the present Agreement. The obligation to pay will continue to be effective during such a decommissioning.

## **Article 10. APPLICATIONS OF THIRD PARTIES**

If and to the extent Shopsuite, on implementing Shopsuite, makes available Applications or other software of third parties to You, with regard to those Applications and/or other software, the conditions of those third parties are applicable, side-tracking the provisions between Shopsuite and You. You accept the conditions of third parties intended, for example though not limited to the conditions used by Amazon.

## **Article 11. INTELLECTUAL PROPERTY RIGHTS**

1. All rights of intellectual property to all Applications, Interfaces, software, source code, other software, documents, and other material that may be subject to any type of intellectual property rights, that were developed or made available in the context of Shopsuite and Odyssey, lie exclusively with Shopsuite B.V., Odyssey B.V. or its licensors.
2. You only obtain the non-exclusive user's rights and authorisations as described in this Agreement or as have been explicitly attributed in writing otherwise. It is not permitted to You to decompile, to multiply the code, to translate, or to otherwise subject to reverse engineering the Applications, Interfaces, source code, other software, documentation, and other material that were developed or made available in the context of Shopsuite. It is not permitted to You to remove or change any indication regarding copyright, branding, trade names, or other rights of intellectual property from the Applications, Interfaces, source code, other software, documentation, and other material that were developed or made available in the context of Shopsuite, including indications regarding the confidential nature and non-disclosure of the material.
3. After taking cognizance of the logic behind the Application (Shopsuite/Odyssey), You may be capable of building the Application (Shopsuite/Odyssey) (and/or an attribution system) in the same, or modified, form. Therefore, You commit yourself to refrain from operating or applying the aforementioned data in whatever way, except for with the purpose described above, without the prior written consent of Shopsuite/Odyssey.
4. In case the use of those data by You results in intellectual property rights or similar claims, You will transfer these rights and/or claims at the first request by Shopsuite to Shopsuite.
5. You will not apply for patents, nor lay any other type of claim, anywhere in the world, with regard to the information provided to it, and it will not enable anyone to do so, without the prior written consent of Shopsuite.

6. Any use, multiplication or rendering public which falls outside the scope of the Agreement or of the user's rights granted, comprises a violation of the intellectual property of Shopsuite. Notwithstanding Article 13 of the Agreement, You shall indemnify Shopsuite for any damages incurred by Shopsuite as a direct result of Your breach of the intellectual property rights of Shopsuite.
7. Any use, multiplication or rendering public which falls outside the scope of the Agreement or of the user's rights granted, comprises a violation of the intellectual property of Shopsuite. You will settle an immediately payable fine of € 250,000, - (in words: two hundred and fifty thousand euros) per action constituting a violation to Shopsuite, and the same amount for every day such violation persists, without prejudice to the other rights of Shopsuite, including the rights to compensation of damages and to compliance. Article 11 will stay in effect after termination of this Agreement.

## **Article 12. CONFIDENTIALITY**

1. You and Shopsuite will make sure that all information received from the other Party of which they know, or should reasonably understand, that they are of a confidential character, will remain secret. The Party receiving confidential information will only use it for the purpose it was provided for. Information will in any case be considered confidential if one of the Parties has indicated it as such.
2. The obligation of confidentiality referred to above does not apply in case the confidential information:
  1. is generally known, without this being caused through the violation of the present confidentiality obligation;
  2. was independently developed by the other party without making use of this information;
  3. was legally obtained by the other party from a third party which is not bound by a similar confidentiality obligation; or
  4. must be rendered public on the grounds of legislation or regulations, a court ruling, or the ruling of a regulatory body.
3. Parties commit themselves to use the information intended in paragraph 12.1 exclusively for the purpose of executing the present Agreement.
4. Parties commit themselves to impose the same obligations as are listed above on persons engaged by them for the execution of this Agreement.
5. The aforementioned confidentiality obligations will remain in force during the effective time of the Agreement and up to two years after its conclusion.
6. On every infringement on the confidentiality obligation inserted in this article, the violating Party will be liable for direct damages suffered by the other Party.
7. On every infringement on the confidentiality obligation inserted in this article, the violating Party will forfeit an immediately payable fine of € 10,000,- (in words: ten thousand euros) per action constituting an infringement, without prejudice to the right of the other Party to seek compensation of damages suffered or to any other right the Party disposes of on account of the infringement.

## **Article 13. INFORMATION AND IT-SECURITY**

1. You shall own all right, title and interest in and to all of Your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data entered into Shopsuite.
2. You and Your Users decide themselves what information will be stored, edited, processed, or otherwise entered into Shopsuite. You will remain responsible yourself, therefore, for the information entered by yourself. Shopsuite is therefore not liable for any damage resulting from information entered by You.
3. Shopsuite is not obliged to control the accuracy and completeness of the information submitted, and is, therefore, not liable for the consequences of the use of the inaccurate and/or incomplete information provided by You.
4. Subject to the type and scope of services provided and the corresponding level of appropriate IT security, Shopsuite shall comply with the following IT-Security & Compliance Requirements when providing the agreed services.
  1. Appropriate technical and organizational measures. Shopsuite shall implement the necessary technical and organizational measures to ensure and maintain the level of IT security adequate for the type and scope of the services provided.
  2. The level of adequate Security is subject to the current technological standards taking into account industry best practises and further development.
  3. Systems connected to Your infrastructure. When Shopsuite uses its own systems directly or indirectly connected to Your infrastructure, You shall not be responsible for the provision of any protective measures for Shopsuite' systems (e.g. PCs, laptops, tablets).

## **Article 14. TREATMENT OF PERSONAL INFORMATION**

1. You input (upload) and or post Data (Personal Data) into or onto Shopsuite yourself.
2. You are the data controller. You warrant to Shopsuite, the data processor, that You comply and will comply with Your obligations as data controller under the applicable data protection regulation (Regulation (EU) 2016/679 of the European Parliament and of 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 (General Data Protection Regulation: GDPR)), including all regulation concerning security measures. You warrant to Shopsuite that You, prior to inputting Data into Shopsuite and using Artemis, have received consent from the data subject for the processing performed by Shopsuite, in accordance with the GDPR, including though not limited to; general provision 32, 39, 40, 42 and article 7 GDPR.
3. You indemnify Shopsuite for third party claims and/or fines that relate to (the content of) Your Data, not limited to not complying with 14.2 of this Agreement and the GDPR.
4. Parties have agreed a Data Processing Agreement, which is attached to this Agreement as Annex 1.

## **Article 15. LIABILITY**

1. In No event will Shopsuite be liable to You or any third party (including, but not limited to, any customer) for any lost profits or lost revenue, diminished goodwill, damage due to operational stagnation, or for any indirect, incidental special, punitive, exemplary or consequential damages arising out or in connection with Shopsuite, the software, Artemis, the service or otherwise with respect to this Agreement.
2. The total liability of Shopsuite on account of an imputable shortcoming in the fulfilment of the present Agreement or on any other account, is limited, for the duration of this Agreement/per event, to compensation of the direct damage, indirect damage is excluded, only to a maximum of the total amount of the remunerations paid by You during the six months period immediately preceding such claim, or one thousand Euro (€ 1.000,-,) whichever is less.
3. The decisions made by You taking into account the outcome of the analysis performed by Shopsuite, are Your responsibility. No rights or claims can be derived from the outcome of the analysis performed by Shopsuite.
4. Taking into account the backup system that is in place for Artemis; article 6.2. and more specific article 6.2.4., all liability to You or any third party with regard to Artemis is excluded.
5. You acknowledge that Shopsuite would not enter into this Agreement without these limitations on its liability.

## **Article 16. FORCE MAJEURE**

1. Force Majeure shall mean any occurrence which (i) hinders, delays or prevents a Party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such Party and (iii) by the exercise of reasonable diligence such Party is unable to prevent or provide against such as acts of God, civil commotion, strikes, terrorism or governmental demands or restrictions. For the avoidance of doubt: Any occurrence that should be contemplated by any business continuity management system meeting the requirements of Good Industry Practice shall not be a Force Majeure event, unless the remedial measures provided in such business continuity management system are not able to remedy the occurrence as a result of the occurrence of another event that can be qualified as a Force Majeure event.
2. In the event of a Force Majeure, the Party whose performance of any of its obligations is affected shall notify the other Party as soon as is reasonably practicable giving the full relevant particulars and shall use its reasonable efforts to remedy the situation immediately.
3. Neither Party shall be responsible for any failure to fulfil any of its obligations under this Agreement to the extent that fulfilment has been hindered or delayed or prevented by a Force Majeure which has been notified in accordance with this clause and the time for performance of the obligation(s) affected shall be adjusted by a reasonable amount.

## **Article 17. Account Profiles**

1. Registered Users may create a public profile listing, and contribute additional Content visible to other Users. Content means text, graphics, images, music, software (excluding

the Application), audio, video, information or other materials. You understand and agree that the placement or ranking of your Profile in search results may depend on a variety of factors, including, but not limited to, Brand or Affiliates preferences, ratings and/or offered rates. You acknowledge and agree that you alone are responsible for any and all Content you post on the Service. Other Users will be able to see your Profile. If you are an Affiliate, Brands will be able to search your profile and will rely on the information to invite you to make a proposal on any offered work.

When you post Content on the Services, you represent and warrant that you have the right, power, and authority to post that Content and grant the licenses specified below. You further represent and warrant that by posting or providing such Content you will not violate third-party rights of any kind, including, without limitation, any Intellectual Property Rights, rights of publicity, and privacy rights. To the extent your Content may be copyrightable, you represent, warrant, and covenant that you are the owner of all the copyright rights to such Content and that we may exercise the rights to your Content granted under the Terms without any liability or obligation for any payment.

In addition, if you are an Affiliate, you are responsible for all publications you make, and you represent and warrant regarding those publications that: (a) they will be in compliance with all applicable laws, rules and guides (such as the "Applicable Data Protection Law", Regulation 2016/679 of the European Parliament and of the Council); (b) that you have all necessary intellectual property and other rights to any posting; (c) your publication does not infringe the rights of any third party. We assume no responsibility for compliance with any agreements between Users, or duties owed by a User to a third party, or a User's compliance with applicable laws, rules and regulations. We reserve the right, at any time and without prior notice, to remove or disable access to any Profile or Content for any reason, including Profiles or Content that we, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or any of our then-current policies and guidelines, or otherwise harmful to the Service.

## **Article 18. No Endorsement**

You understand and agree that Shopsuite is not involved in the interactions between Users and does not refer or endorse or recommend particular Brands or Affiliates. You also understand and acknowledge that Shopsuite does not edit, modify, filter, screen, monitor, endorse or guarantee User Content or the content of communications between Users.

Users are responsible for investigating and verifying to the extent they deem necessary the identity and credentials of other Users contacted via the Services. By using the Services, you agree that any legal remedy or liability that you seek to obtain for actions or omissions of other Users or other third parties will be limited to a claim against the particular User(s) or other third party(ies) who caused you harm, and you agree not to attempt to impose liability on, or seek any legal remedy from, Shopsuite with respect to such actions or omissions.

## **Article 19. DURATION AND TERMINATION**

1. If not otherwise contractually agreed Parties Agree on a contract for an indefinite period of time.

2. Each Party has the right to terminate the Agreement without giving reasons at any time taking into account a one-month notice period. A Termination can be done in writing by registered letter or email or via the secure online administrations interface, provided this option is available.
3. Each Party has the right to rescind the Agreement on account of an imputable shortcoming in the fulfilment of the Agreement, in case the other Party falls imputably short in the fulfilment of substantial obligations from the Agreement. Rescission is only possible after sending a full and detailed default letter which sets a reasonable term for the other party to repair the shortcoming, which it subsequently fails or omits to do. Any obligation to pay on the part of You or of a third party to be engaged by You always counts as substantial obligations from the present Agreement.
4. Each of the Parties can terminate the Agreement with immediate effect without a written default notice, either entirely or partially, in the event suspension of payment – whether or not temporarily – is granted to the other Party, if bankruptcy is filed for with regard to the other Party, or if the business of the other Party is liquidated or terminated in a sense other than that of restructuring businesses. On account of such a termination, Shopsuite is not obligated to refund sums it has already received, nor to pay damages. In the event of bankruptcy of You, the right to use Shopsuite and the Interface will lapse.
5. In the event of termination of the Agreement, Parties will always collaborate in good faith towards the remigration of the information entered during the use of Shopsuite which may be desired by You, as well as towards the transfer of it to You or to a third party indicated by You during this “remigration period”. The continuity in the availability of the information and services will be the main concern here. Parties will consult with each other regarding the extent of the effort which Shopsuite should realise. Shopsuite will be able to charge the expenses it incurs in the context of the remigration of the provision of services to You on the basis of a retrospective calculation.

## **Article 20. DISPUTES AND APPLICABLE LEGISLATION**

1. The laws of The Netherlands are applicable to the Agreement.
2. Any possible disputes between Parties will be submitted to the competent court in Amsterdam The Netherlands. Parties can choose jointly to resolve a dispute by way of arbitration or mediation.

## **Article 21. FINAL PROVISIONS**

1. All notification or other announcements pursuant to the present Agreement take place in writing and can be delivered to, or sent by registered mail or e-mail to the addresses below, or to those addresses as one Party has indicated to the other Party.  
Shopsuite B.V., to the att. of Shopsuite legal,  
Johann Keplerstraat 56-1 (1098 HN) Amsterdam, The Netherlands  
E-mail: [jelle@shopsuite.com](mailto:jelle@shopsuite.com)
2. All Annexes form an integral part of the present Agreement.

3. The present Agreement contains the entire agreement adopted between Parties regarding the object it is concerned with, and it substitutes all previously adopted agreements between Parties on this matter.
4. If, on the grounds of a request or a legitimately issued order by a governing body, or in connection with a legal obligation, Shopsuite must carry out activities with regard to information of You, Your collaborators, or Your Users, all expenses related to them will be charged to You, unless this investigation finds its origins with Shopsuite. Shopsuite will inform You of this as much as possible in advance.
5. Except for when, and to the extent, explicitly established otherwise in the present Agreement, each of the Parties will bear its own costs related to the adoption and implementation of the present Agreement.
6. The rights and obligations flowing from the present Agreement cannot be transferred by You to third parties without the previous written consent of Shopsuite.
7. The version of any communication received or stored by Shopsuite will be considered as authentic (including log files), barring proof to the contrary that is to be provided by You
8. Parties will always inform each other in writing within a reasonable term about any change in name, mail address, e-mail address, phone number, and if required bank account number and credit card information.
9. Each of the Parties hereby waives – to the extent this is legally permitted – any possible right to strive for – total or partial – rescission or annulment of the present agreement.
10. In case the present agreement becomes partially invalid or non-binding, the parties will continue to be bound by the remaining part. Parties will substitute the invalid or non-binding part by clauses that are valid and binding, and of which the legal consequences, considering the content and substance of this agreement, will correspond as much as possible to the invalid or non-binding part.

## **Annex 1. DATA PROCESSING AGREEMENT**

### **1. Parties**

YOU

(the "Data Controller")

and

Shopsuite B.V. (Shopsuite and Odyssey)

(the "Data Processor")

(collectively the "Parties" and individually the "Party")

have concluded this Data Processing Agreement (the "Agreement") on the Data Processor's processing of personal data on behalf of the Data Controller.

### **2. Background**

3. This Agreement has been entered into in connection with the Parties execution of the Shopsuite Software as a Service Agreement and Standard Terms and Conditions, ("Master Agreement").
4. Shopsuite operates the Service to provide a sales-generation and information-sharing platform and related technology services, such as but not limited to: "Artemis" and "Odyssey", to products and services owners "Brands" and Publishers/Affiliates wishing to create positive content related to Brand's consumer products (the Services). Data Processor analyses the customer journey and calculates what the commission could be

that Brand may pay to the affiliate that send visitors to the website of Brand. By doing this, Data Processor provides Data Controller with better insights in the Incremental value of certain Affiliates.

5. Parties have agreed this Data Processing Agreement to comply with the "Applicable Data Protection Law", Regulation 2016/679 of the European Parliament and of the Council 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 (General Data Protection Regulation, GDPR).

6. **Scope and purpose**

7. The Data Processor shall only process personal data for purposes which are necessary in order to perform the services stipulated in the Master Agreement ("the Services") and as further specified:

**The processing of personal data**

- Purpose and nature of the processing operations:

Shopsuite operates the Service to provide a sales-generation and information-sharing platform and related technology services to products and services owners "Brands" and Publishers/Affiliates wishing to create positive content related to Brand's consumer products (the Services). Data Processor analyses the customer journey and calculates what the commission could be that Brand may pay to the affiliate that sends visitors to the website of Brand. By doing this, Data Processor provides Data Controller with better insights in the Incremental value of certain Affiliates. In that connection, the Data Processor may have access to the personal data of the Data Controller's customers.

- Data Processor

Categories of data subjects:

- Customers
- Users of the Data Controller's website

- Categories of personal data:

- Order information
- Name
- Email address

- Sensitive personal data

- Not relevant

- Location(s), including name of country/countries of processing:

Johann Keplerstraat 56-1, 1098 HN Amsterdam, The Netherlands;  
Lindenhoevestraat 43, 1096 DV Amsterdam, The Netherlands.

8. The Agreement constitutes the Data Controller's instructions to the Data Processor and Data Controller's obligations.
9. The Personal Data to be processed by the Data Processor concerns the categories of Data and the categories of data subjects' article 3.1.
10. Shopsuite will only store the results. The results will not contain Personal Data.
11. In addition to this Agreement Parties may agree to store Your Data on a designated private server with Amazon.
12. Shopsuite will automatically delete Your inputted Data after a 30-day period of disuse. Or within 24 hours after You request Shopsuite to delete Your inputted Data.
13. **Obligations of the Data Processor**

14. The Data Processor warrants to the Data Controller that it complies and will comply with its obligations as a data processor under the applicable data protection regulation, including all regulation concerning security measures.
15. All processing by the Data Processor of the personal data provided by the Data Controller shall only be carried out on documented instructions from the Data Controller for the provision of the Services, including with regard to transfers of personal data to a third country or an international organization, unless the Data Processor is required to do so by applicable Union or Member State Law. In such a case, the Data Processor shall immediately inform the Controller of that legal requirement before processing the personal data, unless applicable legislation prohibits such information on important grounds of public interest.
16. The Data Processor shall inform the Data Controller immediately if, in his opinion, an instruction infringes any applicable data protection regulation.
17. The Data Processor shall implement and follow all appropriate and necessary technical and organizational security measures, including any additional measures, required to ensure a level of security appropriate to the harm that might result from unauthorized or unlawful access, processing or accidental loss, destruction or damage to the personal data, and shall ensure that the data is not accidentally or unlawfully destroyed, lost or impaired or brought to the knowledge of unauthorized third parties, abused or otherwise processed in a manner which is contrary to any applicable data protection regulation that may be in force from time to time. In any case and unless otherwise directed in writing by the Data Controller, the Data Processor must, among other things:
  - introduce login and password procedures and set up and maintain a firewall and antivirus software;
  - ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing personal data;
  - ensure that it has the ability to restore the availability and access to the personal data in a timely manner in the event of a physical or technical incident;
  - implement a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing;
  - ensure the pseudonymization and encryption of personal data when appropriate;
  - ensure that only employees with a work related purpose have access to the personal data, and ensure that all employees with access to the data shall not process the data except on instructions from the Data Controller, unless he or she is required to do so by Union or Member State Law;
  - store data storage media securely so that it is not accessible to third parties;
  - ensure that buildings and systems used for data processing are secure and that only high-quality hardware and software, which is regularly updated is used;
  - ensure that tests and waste material are destroyed in accordance with data protection requirements on the specific written instruction of the Data Controller. In particular cases, to be determined by the Data Controller, such tests and waste material must be stored or returned.
18. The personal data is confidential in nature and shall be kept confidential. The Data Processor shall ensure that all employees engaged in processing the personal data have received proper training, adequate instructions and guidelines on the processing of the personal data and have committed themselves to confidentiality. In addition, the Data

Processor must ensure that the employees involved with the processing of the personal data are familiar with the applicable and implemented security requirements and will keep the personal data confidential.

19. The Data Processor must notify the Data Controller immediately where data protection regulation has been breached or other irregularities in connection with the processing of the personal data occur. In any case, the Data Processor shall promptly notify the Data Controller of any security incident that leads or may lead to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed by the Data Processor in connection with the Services ("Security Breach"). The notification to the Data Controller shall in any case include: (a) the nature of the Security Breach; (b) the recommended measures to minimize the negative effects of the Security Breach; (c) the identified and probable consequences of the Security Breach on the processing of personal data by the Data Processor in connection with the Services; and (d) the (proposed) actions (to be) taken to remedy the consequences for the protection of personal data processed by the Data Processor in connection with the Services. The Data Controller's point of contact is as stated in the Master Agreement.
20. The Data Processor shall provide full cooperation to the Data Controller with respect to data protection impact assessments and any Security Breach. With respect to Security Breach such cooperation should include – but not be limited to - providing adequate information and support relating to (a) the recovery of the Security Breach and the prevention of future Security Breaches; (b) the limitation of the impact of the Security Breach on the privacy of the data subjects involved and (c) the communication of a Security Breach to the data subject.
21. Upon the request of the Data Controller, the Data Processor shall provide the Data Controller with all information necessary to demonstrate that the Data Processor has taken the necessary technical and organizational security measures, and to demonstrate compliance with any and all applicable data protection regulations.
22. The Data Processor shall assist the Data Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in in the applicable data protection regulation. If the Data Processor, or another sub-processor which has received personal data, receives a request with respect to the personal data from a data subject, the Data Processor must as soon as reasonably possible send such request to the Data Controller, for the Data Controller's further processing thereof, unless the Data Processor or another sub-processor has been explicitly authorized by the Data Controller to handle such request itself.
23. The Data Processor shall promptly notify the Data Controller about any legally binding request for disclosure of the personal data by law enforcement or other applicable authority unless otherwise prohibited by applicable law.
24. Upon request of the Data Controller, the Data Processor shall assist the Data Controller in taking any actions deemed necessary or appropriate to deal with complaints or allegations of or in connection with a failure to comply with the applicable data protection regulation.
25. **Use of sub-processors**
26. The Data Processor may engage another processor (sub-processor) for the fulfilment of this Agreement without the prior specific or general written consent of the Data Controller.

27. The Data Processor has the Data Controller's general consent for the engagement of sub-processors.
28. The Data Controller shall on commencement of this Agreement approve the engagement of Amazon.
29. If the Data Processor engages a sub-processor that processes personal data in a third country not recognized by the EU Commission as providing adequate protection of personal data, the Data Processor must ensure that there is a legal basis for the transfer, e.g. the EU Commission's Standard Contractual Clauses for the transfer of personal data to third country. The Data Controller hereby provides a mandate to the Data Processor to enter into the EU Commission's Standard Contractual Clauses with a sub-processor (where applicable) on behalf of and in the name of the Data Controller.
30. A copy of the Sub-Processor-Agreement and subsequent amendments shall – at the Data Controllers request – be submitted to the Data Controller.
31. **Obligations of the Data Controller**
32. The Data Controller warrants to Data Processor that he complies and will comply with his obligations as Data Controller under the GDPR.
33. The Data Controller warrants to Data Processor that he, prior to inputting Data into Shopsuite, has received consent from the data subject for the processing performed by Shopsuite, in accordance with general provision 32, 39, 40, 42 and article 7 GDPR.
34. The Data Controller indemnifies Data Processor for third party claims and/or fines that relate to (the content of) his inputted Data, not limited to not complying with this Agreement and the GDPR.
35. **Amendments**
36. In the event of amendments to the applicable data protection regulation, the Data Controller is entitled to amend the instructions set out in this Agreement on the giving of 2 (two) weeks' written notice when forwarding the new written instructions to the Data Processor. The Data Processor must however, at all times, comply with the applicable regulation on the protection of personal data.
37. **Breach**
38. Article 15 of the Master Agreement is applicable to this Data Processing Agreement. The Data Processor shall not be liable for any fine or claim against the Data Controller as a result of the Data Controller not fulfilling its obligations as Data Controller.
39. Liability of either Party for any indirect or consequential damage is excluded under all circumstances or events, including though not limited to loss of profit, savings missed out on, diminished goodwill and damage due to operational stagnation. The exceptions and limitations of the liability of either Party mentioned are not applicable in the event the damage was caused by intent or gross negligence of the management of either Party.
40. **Effective date, duration of processing and termination**
41. This Agreement becomes effective on the date the Master Agreement commences.
42. Termination of the Master Agreement will result in the termination of this Agreement. However, the Data Processor remains subject to the obligations stipulated in this Agreement, as long as the Data Processor processes personal data on behalf of the Data Controller, i.e. until the personal data have been deleted or destroyed as described in section 9.3.
43. In the event of the termination of the Agreement, the Data Processor shall delete or destroy the personal data. There is no obligation for the Data Processor to return Data to Data Controller.

**44. Governing law and jurisdiction**

45. The choice of law and venue stipulated in Article 20 of the Master Agreement shall also apply to this Agreement.

**Annex 2. Amazon**

Name of external service company	Contact Details	Area of Operation
Amazon Server	<a href="http://aws.amazon.com">http://aws.amazon.com</a>	Shopsuite is hosting all Your Data on Amazon servers under the following terms and conditions: <a href="https://aws.amazon.com/s3/sla/">https://aws.amazon.com/s3/sla/</a> <a href="https://aws.amazon.com/ec2/sla/">https://aws.amazon.com/ec2/sla/</a> <a href="https://aws.amazon.com/rds/sla/">https://aws.amazon.com/rds/sla/</a> <a href="https://aws.amazon.com/service-terms/">https://aws.amazon.com/service-terms/</a> <a href="https://aws.amazon.com/agreement/">https://aws.amazon.com/agreement/</a>