



## OptInsight - Terms and Conditions

**Updated on:** January 21, 2019

This is an agreement between you or the entity that you represent (Hereinafter “You”, “Your” or “Client”) and OptInsight B.V. (Hereinafter “OptInsight” or “Supplier”), according to the following terms and conditions (Hereinafter “Terms” or “Agreement”). OptInsight is a consent management and personal data processing service according to the privacy legislation.

### **Acceptance of the Terms**

You must be of legal age to enter into a binding agreement in order to accept the Terms. If you do not agree to the Terms, do not use any of our Services.

### **Description of Service**

We provide various services, including consent management, compliance services, customer data processing and data warehousing ("Service" or "Services"). You may use the Services for your business use or for internal business purpose in the organization that you represent. You may connect to the Services using any Internet browser supported by the Services. You are responsible for obtaining access to the Internet and the equipment necessary to use the Services.

### **Usage Limits for OptInsight**

OptInsight may prescribe usage limits based on the subscription plan chosen by You. You must make sure that Your usage is within the usage limits prescribed by OptInsight in order to avail uninterrupted service. You understand that OptInsight may restrict an activity if You reach the usage limit corresponding to such activity.

### **Our responsibilities**

Provision of OptInsight Services. Supplier will (a) make the OptInsight Services, Content and Client Data available to a Client pursuant to these Terms, (b) provide applicable standard support for the OptInsight Services to Client at no additional charge, and/or upgraded support (for an additional charge, if applicable), (c) use commercially reasonable efforts to make the OptInsight Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Supplier shall give advance electronic notice as provided in the Guidelines), and (ii) any unavailability caused by circumstances beyond Supplier’s reasonable control, including, for example, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack.

Protection of Client Data. Supplier will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data, as described in the Guidelines. Those safeguards will include, but will not be limited to,



measures for preventing access, use, modification or disclosure of Client Data by Supplier personnel except (a) to provide the OptInsight Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section "Client Data" below, or (c) as a Client or User expressly permit in writing.

By agreeing to these Terms, the Client grants the Supplier a general authorization in the meaning of Article 28 (2) of Regulation (EU) 2016/679 to engage processors for the purposes of providing the OptInsight Services.

### **Terms for use of API**

Integration of OptInsight with Third Party Applications using APIs provided by OptInsight requires technical skill. You understand that errors or defects in the integration may cause loss and corruption of data. You must make sure that You use the services of technically skilled persons for the integration. You agree that OptInsight is not liable for any loss and corruption of data caused due to errors or defects in the integration.

You must not try to access any functionality that is not exposed in the documentation for the API. You understand and agree that OptInsight will not be liable for the consequences of accessing or using any unexposed functionality of the API.

### **API Deprecation**

OptInsight, in its discretion, may cease providing the current version of the API either as a result of discontinuation of the API or upgradation of the API to a newer version. In both cases, the current version of the API will stand deprecated and become the deprecated version of the API (hereinafter "Deprecated Version"). When OptInsight decides to deprecate the current version of the API, You will be informed about such deprecation through a service announcement. For a period of six months following announcement of deprecation (hereinafter the "Deprecation Period"), OptInsight will use commercially reasonable efforts to support the Deprecated Version. You understand that OptInsight is not obliged to provide the features of the newer version in the Deprecated Version.

OptInsight in its discretion may cease supporting the Deprecated Version during the Deprecation Period if i) OptInsight is required to do so by law or ii) You have breached any provision of these Terms or iii) OptInsight determines that supporting the API is likely to result in a security risk to OptInsight.

### **API Usage Limits**

OptInsight may prescribe usage limits, including limits on the number of calls, number of records per call, bandwidth usage and frequency of calls. You are required to adhere to the usage limits prescribed by OptInsight in order to avail uninterrupted service. You understand that OptInsight may restrict an activity if You reach the usage limit corresponding to such activity and that an API call may either fail or be partially executed if the usage limits are reached before or during an API call.



## **User Sign up Obligations**

You need to sign up for a user account by providing all required information in order to access or use the Services. If you represent an organization and wish to use the Services for corporate internal use, we recommend that you, and all other users from your organization, sign up for user accounts by providing your corporate contact information. In particular, we recommend that you use your corporate email address. You agree to: a) provide true, accurate, current and complete information about yourself as prompted by the sign up process; and b) maintain and promptly update the information provided during sign up to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if OptInsight has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, OptInsight may terminate your user account and refuse current or future use of any or all of the Services.

## **Organization Accounts and Administrators**

When you sign up for an account for your organization you may specify one or more administrators. The administrators will have the right to configure the Services based on your requirements and manage end users in your organization account. If your organization account is created and configured on your behalf by a third party, it is likely that such third party has assumed administrator role for your organization. Make sure that you enter into a suitable agreement with such third party specifying such party's roles and restrictions as an administrator of your organization account.

You are responsible for i) ensuring confidentiality of your organization account password, ii) appointing competent individuals as administrators for managing your organization account, and iii) ensuring that all activities that occur in connection with your organization account comply with this Agreement. You understand that OptInsight is not responsible for account administration and internal management of the Services for you.

You are responsible for taking necessary steps for ensuring that your organization does not lose control of the administrator accounts. You may specify a process to be followed for recovering control in the event of such loss of control of the administrator accounts by sending an email to [admin@opt-insight.com](mailto:admin@opt-insight.com), provided that the process is acceptable to OptInsight. In the absence of any specified administrator account recovery process, OptInsight may provide control of an administrator account to an individual providing proof satisfactory to OptInsight demonstrating authorization to act on behalf of the organization. You agree not to hold OptInsight liable for the consequences of any action taken by OptInsight in good faith in this regard.

## **Personal Information and Privacy**

Personal information you provide to OptInsight through the Service is governed by OptInsight Privacy Statement. Your election to use the Service indicates your acceptance of the terms of the OptInsight Privacy Statement. You are responsible for maintaining confidentiality of your username, password and other sensitive information. You are responsible for all activities that occur in your user account and you agree to inform us



immediately of any unauthorized use of your user account by email to [admin@opt-insight.com](mailto:admin@opt-insight.com) or by calling us on any of the numbers listed on <https://opt-insight.com/contact-eng/?lang=en>. We are not responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your user account, or otherwise.

### **Communications from OptInsight**

The Service may include certain communications from OptInsight, such as service announcements, administrative messages and newsletters. You understand that these communications shall be considered part of using the Services. As part of our privacy policy, we also provide you the option of opting out from receiving newsletters from us for those processing activities for which we received your consent. However, you will not be able to opt-out from receiving service announcements and administrative messages.

### **Complaints**

If we receive a complaint from any person against you with respect to your activities as part of use of the Services, we will forward the complaint to the primary email address of your user account. You must respond to the complainant directly within 10 days of receiving the complaint forwarded by us and copy OptInsight in the communication. If you do not respond to the complainant within 10 days from the date of our email to you, we may disclose your name and contact information to the complainant for enabling the complainant to take legal action against you. You understand that your failure to respond to the forwarded complaint within the 10 days' time limit will be construed as your consent to disclosure of your name and contact information by OptInsight to the complainant.

### **Fees and Payments**

The Services are available under subscription plans of various durations. Payments for subscription plans of duration of less than a year can be made by Credit Card or PayPal. Your subscription will be automatically renewed at the end of each subscription period unless you inform us that you do not wish to renew the subscription. At the time of automatic renewal, the subscription fee will be charged to the Credit Card or PayPal last used by you. We provide you the option of changing the details if you would like the payment for the renewal to be made through a different Credit Card or PayPal. If you do not wish to renew the subscription, you must inform us at least seven days prior to the renewal date. If you have not informed us that you do not wish to renew the subscription, you will be presumed to have authorized OptInsight to charge the subscription fee to the Credit Card or PayPal last used by you.

From time to time, we may change the price of any Service or charge for use of Services that are currently available free of charge. Any increase in charges will not apply until the expiry of your then current billing cycle. You will not be charged for using any Service unless you have opted for a paid subscription plan.



## **Restrictions on Use**

In addition to all other terms and conditions of this Agreement, you shall not: (i) transfer the Services or otherwise make it available to any third party; (ii) provide any service based on the Services without prior written permission; (iii) use the third party links to sites without agreeing to their website terms & conditions; (iv) post links to third party sites or use their logo, company name, etc. without their prior written permission; (v) publish any personal or confidential information belonging to any person or entity without obtaining consent from such person or entity; (vi) use the Services in any manner that could damage, disable, overburden, impair or harm any server, network, computer system, resource of OptInsight; (vii) violate any applicable local, state, national or international law; and (viii) create a false identity to mislead any person as to the identity or origin of any communication.

## **Spamming and Illegal Activities**

You agree to be solely responsible for the contents of your transmissions through the Services. You agree not to use the Services for illegal purposes or for the transmission of material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or is otherwise objectionable, offends religious sentiments, promotes racism, contains viruses or malicious code, or that which infringes or may infringe intellectual property or other rights of another. You agree not to use the Services for the transmission of "junk mail", "spam", "chain letters", "phishing" or unsolicited mass distribution of email. We reserve the right to terminate your access to the Services if there are reasonable grounds to believe that you have used the Services for any illegal or unauthorized activity.

## **Client Data**

Uploading Client Data to Platform.

If the Client uploads Client Data (personal data of prospects & customers) to the Platform, such Client Data and any processing of such Client Data must be in compliance with these Terms and applicable law. All rights, title and interest in and to the Client Data belong to the Client or third persons (including Users, persons and Organizations) whether posted and/or uploaded by you or made available on or through the OptInsight Services by Supplier. By uploading Client Data to the Platform, Client authorizes Supplier to process the Client Data.

The Client is responsible for ensuring that:

- the Client and any of the Users associated with the Account do not create, transmit, display or make otherwise available any Client Data that violates the terms of these Terms, the rights of Supplier, other Clients or Users, persons or Organizations or is harmful (for example viruses, worms, malware and other destructive codes), offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful; and
- the Client and all of the Users associated with the Account have the necessary rights to use the Client Data, including to insert it into the Platform and process it by means of the Account.



#### No Guarantee of Accuracy.

Supplier does not guarantee any accuracy with respect to any information contained in any Client Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the OptInsight Services. You understand that all information contained in Client Data is the sole responsibility of the person from whom such Client Data originated. This means that Client, and not Supplier, is entirely responsible for all Client Data that is uploaded, posted, transmitted, or otherwise made available through the OptInsight Services, as well as for any actions taken by the Suppliers or other Clients or Users as a result of such Client Data.

#### Unlawful Client Data.

Supplier is not obliged to pre-screen, monitor or filter any Client Data or acts of its processing by the Client in order to discover any unlawful nature therein. However, if such unlawful Client Data or the action of its unlawful processing is discovered or brought to the attention of Supplier or if there is reason to believe that certain Client Data is unlawful, Supplier has the right to:

- notify the Client of such unlawful Client Data;
- demand that the Client bring the unlawful Client Data into compliance with these Terms and applicable law;
- temporarily or permanently remove the unlawful Client Data from the Web Site or Account, restrict access to it or delete it.
- If Supplier is presented convincing evidence that the Client Data is not unlawful, Supplier may, at its sole discretion, restore such Client Data, which was removed from the Account or access to which was restricted.

In addition, in the event Supplier believes in its sole discretion Client Data violates applicable laws, rules or regulations or these Terms, Supplier may (but has no obligation), to remove such Client Data at any time with or without notice.

OptInsight as the data processor will assist the Client as the data controller in meeting the Client's obligations under Regulation (EU) 2016/679, providing subject access, and allowing data subjects to exercise their rights under Regulation (EU) 2016/679.

#### Compelled Disclosure.

Supplier may disclose a Client's confidential information to the extent compelled by law to do so. In such instance, Supplier will use commercially reasonable efforts to provide Client with prior notice of the compelled disclosure (to the extent legally permitted) and Client shall provide reasonable assistance, at its cost, if Client wishes to contest the disclosure. If Supplier is compelled by law to disclose Client's confidential information as part of a civil proceeding to which Supplier is a party, and Client is not contesting the disclosure, Client will reimburse Supplier for its reasonable cost of compiling and providing secure access to that confidential information.

#### **Data Ownership**

We respect your right to ownership of data processed by you. You own the processed data. Unless specifically permitted by you, your use of the Services does not grant OptInsight the



license to use, reproduce, adapt, modify, publish or distribute the processed data created by you or stored in your user account for OptInsight's commercial, marketing or any similar purpose. But you grant OptInsight permission to access, store and transmit, the processed data of your user account solely as required for the purpose of providing including improving the Services to you.

### **Sample files and Applications**

OptInsight may provide sample files and applications for the purpose of demonstrating the possibility of using the Services effectively for specific purposes. The information contained in any such sample files and applications consists of random data. OptInsight makes no warranty, either express or implied, as to the accuracy, usefulness, completeness or reliability of the information or the sample files and applications.

### **Trademark**

OptInsight, OptInsight logo, the names of individual Services and their logos are trademarks of OptInsight. You agree not to display or use, in any manner, the OptInsight trademarks, without OptInsight's prior permission.

### **Disclaimer of Warranties**

You expressly understand and agree that the use of the services is at your sole risk. The services are provided on an as-is-and-as-available basis. OptInsight expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. OptInsight makes no warranty that the services will be uninterrupted, timely, secure, or error free. Use of any material downloaded or obtained through the use of the services shall be at your own discretion and risk and you will be solely responsible for any damage to your computer system, mobile telephone, wireless device or data that results from the use of the services or the download of any such material. No advice or information, whether written or oral, obtained by you from OptInsight, its employees or representatives shall create any warranty not expressly stated in the terms.

### **Limitation of Liability**

You agree that OptInsight shall, in no event, be liable for any consequential, incidental, indirect, special, punitive, or other loss or damage whatsoever or for loss of business profits, business interruption, computer failure, loss of business information, or other loss arising out of or caused by your use of or inability to use the service, even if OptInsight has been advised of the possibility of such damage. In no event shall OptInsight's entire liability to you in respect of any service, whether direct or indirect, exceed the fees paid by you towards such service.

### **Indemnification**

You agree to indemnify and hold harmless OptInsight, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that you have used the



Services in violation of another party's rights, in violation of any law, in violations of any provisions of the Terms, or any other claim related to your use of the Services, except where such use is authorized by OptInsight.

### **Suspension and Termination**

We may suspend your user account or temporarily disable access to whole or part of any Service in the event of any suspected illegal activity, extended periods of inactivity or requests by law enforcement or other government agencies. Objections to suspension or disabling of user accounts should be made to [admin@opt-insight.com](mailto:admin@opt-insight.com) within thirty days of being notified about the suspension. We may terminate a suspended or disabled user account after thirty days. We will also terminate your user account on your request. In addition, we reserve the right to terminate your user account and deny the Services upon reasonable belief that you have violated the Terms and to terminate your access to any Beta Service in case of unexpected technical issues or discontinuation of the Beta Service. You have the right to terminate your user account if OptInsight breaches its obligations under these Terms and in such event, you will be entitled to prorated refund of any prepaid fees. Termination of user account will include denial of access to all Services, deletion of information in your user account such as your email address and password and deletion of all data in your user account.

### **Modification of Terms & Conditions**

We may modify the Terms upon notice to you at any time through a service announcement or by sending email to your primary email address. If we make significant changes to the Terms that affect your rights, you will be provided with at least 30 days advance notice of the changes by email to your primary email address. You may terminate your use of the Services by providing OptInsight notice by email within 30 days of being notified of the availability of the modified Terms if the Terms are modified in a manner that substantially affects your rights in connection with use of the Services. In the event of such termination, you will be entitled to prorated refund of the unused portion of any prepaid fees. Your continued use of the Service after the effective date of any change to the Terms will be deemed to be your agreement to the modified Terms.

### **Law and Jurisdiction**

This Agreement is subject to Dutch Laws and the exclusive jurisdiction of the Amsterdam Court.

### **END OF TERMS & CONDITIONS**

If you have any questions or concerns regarding this Agreement, please contact us at [admin@opt-insight.com](mailto:admin@opt-insight.com).