

WE RECOMMEND



Annex 4: Software Licensing Agreement

between

YOOCHOOSE GmbH

Im Mediapark 8
50670 Cologne

Commercial Register Entry: Cologne HRB 65275

and

Motor Presse Stuttgart GmbH & Co. KG

Leuschnerstraße 1
70174 Stuttgart

Commercial Register Entry: Stuttgart HRA 9302

Tamara

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24.03.2010

§ 1 Object of this agreement

1.1 YOOCHOOSE provides the customer with the software Recommender Engine 1.0 (**“Recommender Engine”** or **“software”**) for online usage and renders support service with regard to the software (summarized as **“services”**). The software serves to generate personalized recommendations. It is operated on a YOOCHOOSE server. Usage is made online via the Internet address wss.yoochoose.net (**“online access”**).

1.2 The recommendations are exclusively meant for presentation on the customer's own dedicated and specified website(s). The recommendations are exclusively addressed to the end users of the customer's website. Usage in the form of forwarding to, links to or presentation on other websites or portals is expressly excluded.

1.3 In terms of services, the provisions of this software licensing agreement shall apply exclusively. Any contractual terms of the customer shall not be part of this contract even if YOOCHOOSE does not expressly object to them, unless YOOCHOOSE accepts such terms in writing.

§ 2 Software provision

2.1 YOOCHOOSE provides the customer with the software by way of online access.

2.2 The extent of functions and services of the software is exclusively described in the product description (**“product description”**). At the time the agreement is concluded, YOOCHOOSE will supply the customer with the current version of the product description.

2.3 If the extent of functions and services of the software changes based on support provision (§ 6) or otherwise as part of software evolution (e.g. due to a change in the state of technology), YOOCHOOSE can adjust the product description accordingly. In this case, YOOCHOOSE will make the modified product description available on the Internet at www.yoochoose.com and inform the customer about the modification in writing. The new product description will become binding for both contractual parties unless the customer objects to this modification in writing within two weeks of receipt. When notifying the customer of the new product description, YOOCHOOSE will inform the customer of this deadline and the legal consequences if this deadline is missed. However, the right to modify the software and/or the product description must not result in a reduction of the quality or the extent of functions and services of the software in relation to the point in time the agreement was concluded.

2.4 Other requirements shall only become part of this agreement, if YOOCHOOSE confirms them in writing. Prior to concluding this agreement, the customer will verify that the extent of functions and services of the software meets his requests and needs. He or she is aware of the essential functional characteristics and conditions of the software.

2.5 The product description pursuant to Section 2 represents the basis for the customer's **warranty claims**. However, it does not represent a **guarantee**. A **guarantee** requires a written declaration by the management of YOOCHOOSE.

2.6 YOOCHOOSE is only liable for making the software available for access via the Internet. The customer is responsible for generating and maintaining the connection of his IT system to the Internet.

2.7 YOOCHOOSE provides the customer with online help that is accessible on the Internet at www.yoochoose.net. YOOCHOOSE will not provide the customer with any other manuals or documentations.

§ 3 Software availability

3.1 YOOCHOOSE is responsible for 99.8% software availability. This availability refers to the calendar year and is calculated as follows:

Availability in % = (total hours per calendar year minus hours of unavailability during the calendar year)*100 / total hours per calendar year

The maximum uninterrupted outage must not exceed four hours.

3.2 If the customer has exceeded the number of maximally relevant recommendations (comp. § 8 para. 3) in one calendar month, the availability rule pursuant to Section 1 shall not apply to further use of the software in said calendar month. In this case, YOOCHOOSE is merely liable for availability in terms of technical and operational possibilities.

3.3 Unavailability must be assumed if the software is fully unavailable due to circumstances that are the responsibility of YOOCHOOSE. This does not include times during which the software is unavailable due to

- a) Disruptions of the data connection outside the IT systems of YOOCHOOSE, especially disruptions within the Internet;
- b) Higher force;
- c) A violation of the customer's duties of participation (§ 7);
- d) Planned maintenance times (Section 4).

3.4 YOOCHOOSE is allowed to temporarily interrupt software availability for the purpose of maintenance and the installation of software updates ("**planned maintenance times**").

Planned maintenance times exclusively occur from 11:00 p.m. to 5:00 a.m. YOOCHOOSE will announce planned maintenance times that lead to a likely uninterrupted outage of more than one hour to the customer at least 10 days in advance. Overall, the duration of planned maintenance times must not exceed 10 hours per month.

§ 4 Usage rights of the customer

4.1 The customer is only entitled to use the software to process his own data at his own place of business for his own purposes ("**usage right**"). The customer is not entitled to enable any third party to use the software. The usage right is limited to the term of this software licensing agreement.

4.2 Usage of the software is restricted to online access. The customer shall not receive any copies of the software, neither as source code nor as object code.

4.3 Any use of the software that exceeds the extent described in this Section 4 is illegal without the prior written authorization of YOOCHOOSE.

4.4 The technical prerequisites for usage of the software are described in the documentation of the Web service API ("**API documentation**"). Upon conclusion of the contract, YOOCHOOSE will provide the customer with a current version of the API documentation. YOOCHOOSE can adjust the technical prerequisites to the state of technology from time to time, if and inasmuch as this is reasonable for the customer. § 2 para. 3 will apply accordingly. It is the responsibility of the customer to ensure that he meets the technical prerequisites.

§ 5 Data storage

5.1 The customer can store the following data on the server on which the software is operated (summarized as "**the customer's data**"):

- a) Clear identifiers and meta data of the elements to be recommended;
- b) Catalog and structural information for the elements to be recommended;
- c) Clear identifiers for representation of the end users of the customer's application.

5.2 With regard to the customer's data, YOOCHOOSE is not subject to any custodial and duty of care obligations. The customer is responsible for meeting any retention requirements in accordance with trade and tax laws.

5.3 The customer will be provided with a maximum storage capacity of 2 Gigabytes. YOOCHOOSE will inform the customer when the available storage capacity is exhausted.

5.4 YOOCHOOSE is not responsible for backing up the customer's data. Upon termination of this agreement, YOOCHOOSE is entitled to delete the customer's data without prior notification. The customer is responsible for making copies of his or her data in a timely manner before the term of this agreement ends.

§ 6 Support

6.1 YOOCHOOSE renders the following support services:

a) Processing of error messages

The customer shall report errors to YOOCHOOSE and describe as exactly as possible the error symptoms, the operating conditions, the input and output data, the number of affected workstations, the hardware and software environment including potentially used third-party software (the "**error report**") via the hotline (comp. c). Each report must be made immediately upon detection of the error. YOOCHOOSE processes properly reported errors as follows:

- (i) YOOCHOOSE supports and advises the customer in handling and avoiding the error and makes an effort to eliminate the error.
- (ii) There is an error, if the software does not have the functionalities specified in the product description. Impairments in software usage that were caused through improper software handling, higher force or other circumstances that can not be attributed to the software do not constitute an error.

- (iii) For errors that render usage of the software impossible or severely impair it, YOOCHOOSE shall make a work-around solution available, if technically feasible and economically reasonable, until the error is eliminated. The type and method of error elimination is at the discretion of YOOCHOOSE.
- (iv) If YOOCHOOSE provides the customer with instructions on how to avoid or work around errors, the customer must follow them. This does not apply, if accepting and following such instructions is unreasonable for the customer in the case at hand.

b) Further development of the software

YOOCHOOSE further develops the software in terms of quality and state of the art and adjusts them to changed requirements. Such developments may include:

- (i) Elimination of errors of which YOOCHOOSE has become aware independent of an error report by the customer;
- (ii) Adjustments to the software due to technical modifications or innovations or other adjustments in terms of quality and state of the art of the software.

This does not include essential functional extensions of the software or comparable fundamental changes. The type and extent of further developments of the software are at the discretion of YOOCHOOSE.

c) Hotline

YOOCHOOSE will establish a hotline. The hotline will be available from Monday to Friday with the exception of legal holidays at YOOCHOOSE's place of business between 8:00 a.m. and 5:00 p.m. ("**service hours**") by phone, via e-mail and by fax through the contact information listed at the website www.yoochoose.net. The hotline may only be used by those employees of the customer who are familiar with the handling of the software.

d) Response times

An initial response to a proper error report will occur after no more than two hours for error reports received before 3:00 p.m. and within service hours, otherwise by 10:00 a.m. on the following business day within service hours after the proper error report.

6.2 If modifications of the software have an impact on the available online help, YOOCHOOSE will adjust the online help accordingly.

§ 7 Customer participation

7.1 The customer provides YOOCHOOSE with all documents and information required for service provision. The customer shall report all changes in writing without delay.

7.2 The customer shall support YOOCHOOSE appropriately during the elimination of errors and disruptions. Specifically, he shall report any occurring errors and disruptions immediately after he becomes aware of them, describe the problem as exactly as possible and provide any information, documents and data that would be useful in error elimination.

7.3 YOOCHOOSE provides the customer with access information (user ID, password, etc.) for access to the software. The customer shall treat this confidentially and protect it from unauthorized access. He may only disclose the access information to those employees who are authorized to access the software on his behalf. If the customer suspects that his access information has become known to a third party or that a third party accesses the software without authorization, he is under obligation to immediately inform YOOCHOOSE of this fact in writing.

7.4 The customer may only use the software appropriately as part of its intended functional extent, in accordance with this agreement and in compliance with the applicable legal provisions.

7.5 The customer shall relieve YOOCHOOSE of any liability resulting from claims filed by third parties and compensate YOOCHOOSE for any damages and expenses YOOCHOOSE incurs due to the customer's violations of the obligations pursuant to § 7, unless the customer proves that said violations were not his fault.

7.6 YOOCHOOSE is entitled to block the customer's access to the software temporarily, if the customer's access results in an essential impairment of the security or functionality of YOOCHOOSE's systems, or if third parties claim or credibly demonstrate legal violations by the customer in connection with usage of the software, or if there are justified doubts regarding the legality of software usage for other reasons. YOOCHOOSE will set an appropriate deadline for the customer to comment. If the customer cannot provide proof of legality within this time period, YOOCHOOSE has the right to extraordinary termination of this software licensing agreement.

7.7 YOOCHOOSE's claim to the agreed upon compensation (§ 8) remains effective during the period of blocking and in the case of an extraordinary termination, not to exceed the period until the next available end date based on regular termination. This does not apply, if the block or extraordinary termination was unjustified or if the customer proves that he was not at fault for the block or extraordinary termination. YOOCHOOSE must deduct any expenses saved and proven by the customer due to blocking or extraordinary termination. Any additional claims by YOOCHOOSE remain unaffected.

7.8 The customer shall specify a contact to be available to YOOCHOOSE for necessary information and who can make or bring about decisions immediately.

§ 8 Compensation, payment¹

8.1 Compensation shall be based on the number of accessed recommendations arranged by the customer via the function "getRecommendation" as described in the API documentation ("relevant recommendations"). The offered packages, quantities and prices are stipulated in the list of prices and quantities ([Annex 1](#)).

8.2 Independent of the number of relevant recommendations actually requested by the customer in a calendar month, the customer owes compensation for the relevant recommendation packages per calendar month indicated in the list of prices and quantities (minimum turnover).

8.3 If the number of actually requested relevant recommendations in one calendar month exceeds the quantity indicated in the list of prices and quantities ("number of maximum relevant

¹ 8.1 to 8.5 are not applicable during pilot operation. See also special agreements on pilot operation at the end of this document.

recommendations“), the customer only owes compensation for the number of maximum relevant recommendations for this calendar month. For recommendations exceeding the number of maximum relevant recommendations within this calendar month, limited availability applies pursuant to § 3 para. 2.

8.4 At any time, the customer may demand in writing an increase of the number of maximum relevant recommendations stated in para. 3. at the terms stipulated in the price list. The increase becomes binding if YOOCHOOSE confirms it in writing. If the customer exceeds the number of maximum relevant recommendations in three successive calendar months, YOOCHOOSE can ask the customer to make such a request within an appropriate time period. If the customer does not follow this request, YOOCHOOSE has the right to terminate this agreement by derogation from § 14 with a period of notice of one month to the end of a calendar month.

8.5 Compensation is billed after each month. The customer can object to YOOCHOOSE in writing to the billing amount within four weeks upon receipt of the invoice in question. After this deadline has expired, the bill shall be considered approved by the customer. In the invoice, YOOCHOOSE will specially inform the customer about this deadline and the legal consequences if it is missed. Any legal claims of the customer after deadline expiration remain unaffected.

8.6 Payments must be made without deduction within fourteen days of receipt of invoice.

8.7 The compensation is subject to sales tax.

8.8 If the customer delays payment of the compensation and if YOOCHOOSE sets the customer a payment deadline of at least four weeks that passes without success, YOOCHOOSE is entitled to block the customer's access to the software for the duration of payment delay. YOOCHOOSE will notify the customer of this measure in writing in advance. For the duration of blocking, the customer remains under obligation to pay the contractual compensation. However, YOOCHOOSE must deduct any expenses saved by blocking and proven by the customer.

8.9 The customer can only set off any claims that are undisputed by YOOCHOOSE or have been legally ascertained. Except for the area covered by § 354 a of the German Commercial Code (HGB), the customer can only assign claims arising from this agreement to any third party with the prior written consent of YOOCHOOSE. The customer only has the right of retention or the right to object to unfulfilled contracts within this contractual relationship.

§ 9 Service disruptions

9.1 Immediately upon becoming aware of them, the customer shall notify YOOCHOOSE via the hotline of any faults, disruptions and pending risks (summarized as “**service disruptions**“). As far as this is reasonable, the customer shall take all required measures to ascertain, contain and document the service disruption and provide adequate support in searching for the fault.

9.2 All service disruptions that can be attributed to YOOCHOOSE will be eliminated by YOOCHOOSE within an appropriate time period. § 6 applies accordingly.

9.3 For service disruptions, the customer initially remains obligated to pay the compensation stipulated in the software licensing agreement. The customer's right to demand a full or partial refund in case of service disruptions according to the principle of unjustified enrichment remains unaffected.

9.4 The customer can set an appropriate deadline communicated to YOOCHOOSE in writing for eliminating the service disruption. After this deadline passes without success, the customer shall be entitled to an extraordinary termination of this agreement without notice. Regarding claims for damages or compensation for wasted expenditure, § 10 shall apply.

§ 10 Compensation for damages or expenses

10.1 Unless different agreements have been made in writing by the contractual parties, YOOCHOOSE shall provide compensation for damages and wasted expenditure, regardless of the legal reason (e.g. from contractual or similar obligations, defect in goods or title, violation of duty or tort), only to the following extent:

- a) In case of intent, fraud or gross negligence and for written guarantees issued by the management of YOOCHOOSE, the company shall be fully liable.
- b) In case an obligation is infringed by simple negligence, the fulfillment of which enables proper implementation of the contract in the first place and the observance of which the customer regularly trusts and is entitled to expect and whose breach jeopardizes the achievement of the purpose of the contract (cardinal duty), YOOCHOOSE shall be liable for the typical damages that are foreseeable at the time the contract is concluded.
- c) For the rest, any liability for simple negligence is excluded.
- d) For violation of life, body and health and for claims arising from product liability law, the legal regulations shall apply.
- e) The option of claiming contributory negligence remains open.

10.2 YOOCHOOSE shall only be liable for disruptions and defects existing at the time the contract is concluded, if YOOCHOOSE is at fault for these disruptions and defects and only within the scope of this § 10.

10.3 Claims for damages and compensation of wasted expenditure expire after one year. In the cases mentioned in Section 2 a) and d), the legal statute of limitation shall apply. § 199 para. 3 of the German Civil Code (BGB) remains unaffected.

§ 11 Term of performance, delays, place of performance

11.1 Terms of performance shall be extended by such periods during which the customer is in default under this software licensing agreement and by any period during which YOOCHOOSE is prevented from performance by circumstances for which it is not responsible, with such extension to continue during a reasonable start-up time after the end of the delay. Such circumstances also include force majeure or labor disputes. Any performance periods shall also be extended by any such time in which the customer in violation of the contract does not meet its contributory obligations.

11.2 If the contractual partners subsequently agree to perform different or additional services affecting the stipulated terms, such time limits shall be extended by a reasonable period.

11.3 Any reminders and setting of deadlines on the part of the customer must be made in writing in order to be effective. Any grace period must be appropriate. A period of less than two weeks shall only be appropriate in case of special urgency.

11.4 Place of performance for all services from and in connection with this software licensing agreement is the location of YOOCHOOSE.

§ 12 Confidentiality

12.1 Each contracting party undertakes to treat as confidential all objects with which it is provided by the other party or otherwise made acquainted prior to or during contractual performance (e.g. software, documents, information) and which are legally protected or contain business or operational secrets or are otherwise characterized as confidential, also beyond the term of the contract, unless such objects are already in the public domain without breach of this duty. The contracting parties will store and secure these objects in such a way that third parties are unable to access them.

12.2 YOOCHOOSE may cite the customer as a reference customer after successful conclusion of the contract.

§ 13 Data privacy

13.1 For provision of the software in accordance with this contract, YOOCHOOSE does not require any personal information from the customer's business environment. The assignment of individual inquiries and recommendations can exclusively be made via pseudonyms.

13.2 The customer is responsible for ensuring that his usage of the software is in compliance with data privacy regulations and that no personal information or data that enable the identification of natural persons are transmitted to YOOCHOOSE during the use of the software.

13.3 YOOCHOOSE will only use, process and store the customer's data as part of rendering services under this contract. Any other usage beyond this scope, especially the release of data to any third party, requires the customer's consent. YOOCHOOSE will delete the data no later than four weeks after termination of this agreement. §5 para. 4 remains unaffected.

§ 14 Term of the agreement, termination

14.1 This agreement can be terminated by either party with a period of notice of three months to the end of a calendar month. The earliest termination date is **August 1, 2010**.

14.2 This is without prejudice to the right to terminate the contract without notice for serious reasons.

14.3 Notices of termination shall only be effective if made in writing.

§ 15 Transfer to third parties

YOOCHOOSE is entitled to transfer the rights and obligations from this software licensing agreement to a third party without the customer's consent. YOOCHOOSE will announce such a transfer in writing four weeks in advance. If the customer does not consent to the transfer, he may terminate this contract without observing a period of notice. The termination must be made in writing. If the customer exercises his right of termination, YOOCHOOSE will refund any compensation paid in advance on a pro-rated basis.

§ 16 Contract modifications

YOOCHOOSE is entitled to modify the software licensing agreement. YOOCHOOSE will announce the modification to the customer in writing. The modification is considered agreed upon, if the customer does not object in writing within four weeks of receipt of the announcement. In the announcement, YOOCHOOSE will separately advise the customer of the deadline and the legal consequences if this deadline is missed.

§ 17 Other provisions

17.1 Alterations and additions to this software licensing agreement shall only be valid if made in writing. The written form requirement can be waived only in writing.

17.2 Insofar as declarations have to be made in writing according to these contractual terms, e-mails and faxes suffice unless otherwise agreed. This does not apply to declarations in accordance with § 9 para. 4, § 11 para. 3, § 14 para. 3 and § 17 para. 1, which must always meet the form pursuant to § 126 of the German Civil Code (BGB).

17.3 The law of the Federal Republic of Germany shall exclusively apply excluding the UN Convention on the International Sales of Goods. The seat of YOOCHOOSE shall be the place of fulfillment and jurisdiction for all disputes arising from and in connection with this contract. YOOCHOOSE also has the right to file a suit at the general place of jurisdiction of the customer.

17.4 In case of any differences of opinion arising under or in connection with this contract or any supplements or additions thereto, which they are unable to resolve themselves, the contracting parties agree to call upon the conciliation office of the German Association of Law and Informatics (Deutsche Gesellschaft für Recht und Informatik e. V. – DGRI) (www.dgri.de) in order to resolve the dispute fully or partially, provisionally or finally according to the DGRI conciliation rules in the version effective at the time the conciliation proceedings are initiated. The statute of limitations for all claims arising from the contentious life circumstances is suspended from the request for conciliation to one month after the conciliation proceedings are terminated; § 203 of the German Civil Code (BGB) applies accordingly.

Cologne, _____(date) _____(place), _____(date)

YOOCHOOSE GmbH

Customer

§ 18 Special provisions on pilot operation

As part of pilot operation, YOOCHOOSE offers the recommendation service at the following special terms:

Until the end of the test operation on July 31, 2010 (see schedule in the quotation), the recommendation service will be provided free of charge.