



END USER LICENSE AGREEMENT (EULA)

This agreement (the “Agreement”) is a legal agreement between you, either an individual or a single legal entity (“You” or “you”), and Nutshell, Inc. (“Nutshell”). This Agreement governs your use of Nutshell’s Products, Software or Services, including any updates and accompanying written documentation provided to you (the “Products, Software or Services”).

You acknowledge and agree that Nutshell may occasionally contact you via email. Please see the Nutshell Privacy Policy, which is incorporated into this Agreement by reference.

Accounts, Passwords and Security

You must be a registered user to access the Products, Software or Services. You are responsible for keeping your password secure. You will be solely responsible and liable for any activity that occurs under your user name. If you lose your password, you can reset it only through Nutshell’s Forgot Password email validation system.

Acceptable Use and Conduct

You are solely responsible for your conduct and your data related to the Products, Software or Services. You agree to indemnify, defend, and hold harmless Nutshell and its suppliers from any and all loss, cost, liability, and expense arising from or related to your data, your use of the Products, Software or Services, or your violation of these terms.

The Products, Software or Services are made available to you only for your personal or internal business use, which use must be in compliance with all applicable laws, rules and regulations and must not infringe or violate third party rights. You may not make commercial use of the Products, Software or Services, including but not limited to selling or distributing the Products, Software or Services to any third party.

Any unauthorized use of any Nutshell computer system is a violation of this Agreement and certain federal and state laws. Such violations may subject the unauthorized user and his or her agents to civil and criminal penalties.

Bulk email

Some of Nutshell's features allow you to send email en masse — either via services like MailChimp, or directly. As a Nutshell customer, you agree not to send spam, [as defined by Spamhaus](#). This means understanding and abiding by relevant rules, like [CAN-SPAM](#).

Violations of this policy may result in the suspension of your Nutshell account.

Click-to-call phone recording

You are solely responsible for your use of Nutshell's "click-to-call" feature. You and your end users agree to comply with all applicable laws regarding the recording of phone calls. This may include notifying all parties to a conversation that their calls are being recorded.

Consent to Collect Non-personal Information, Use of Data

The Products, Software or Services may collect certain non-personally identifiable information that resides on your device, including, without limitation, statistics relating to how often it is used, performance metrics relating to the Products, Software or Services, and configuration settings. This information collected will be sent to Nutshell and may be used by Nutshell without restriction.

When you enter your data during use of the Products, Software or Services, you agree that Nutshell may copy and store such data as part of the Products, Software or Services.

Changes to the Products, Software or Services and Terms and Conditions

Nutshell reserves the right at any time to modify, suspend, or discontinue providing the Products, Software or Services or any part thereof in its sole discretion with or without notice.

Nutshell reserves the right at any time to modify this Agreement in its sole discretion, without liability to you. This Agreement, as amended, will be effective upon use of the Nutshell Products, Software or Services and effective for all existing users immediately after posting of any amended terms on the Nutshell.com website. You agree to be bound by this Agreement, as modified. If you do not agree to any changes to this Agreement, you must terminate your account immediately.

Please review the most current version of this Agreement from time to time, located at <https://www.nutshell.com/support/eula> (or such successor URL as Nutshell may provide), so that you will be apprised of any changes.

Use of Products, Software or Services

Subject to the terms and conditions of this Agreement, Nutshell grants you a non-exclusive, non-transferable, non-sublicensable limited and revocable license to use the Products, Software or Services for which you have paid the applicable fees and taxes, and to use the Nutshell Products, Software or Services for the sole and exclusive purposes of your personal or internal business purposes. Certain third party code may be provided with the Products, Software or Services. The third-party license terms accompanying such code, and not the terms of this Section, will govern your use of such code. Nutshell reserve all other rights to its Products, Software or Services.

The Products, Software or Services and their structure, organization, source code, and documentation contain valuable trade secrets of Nutshell and its licensors, and accordingly you agree not to (and agree not to allow third parties to) (1) sublicense, lease, rent, loan, transfer, or distribute any aspect of the Products, Software or Services or any derivative thereof to any third party, (2) modify, adapt, translate, or prepare derivative works from the Products, Software or Services, (3) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Products, Software or Services, (4) extract portions of the software's files for use in other applications, or (5) remove, obscure, or alter Nutshell's or any third party's trademarks or copyright or other

proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Products, Software or Services.

Renewals and Refunds

You agree that Nutshell shall have the right to automatically and without notice renew your license to continue to use the Products, Software or Services upon expiration of your license period, and that as part of such renewal Nutshell shall have the right to charge the applicable renewal fees and any applicable taxes to any credit card payment method on file with your account. You agree that if you elect to not permit Nutshell the right to automatically renew your license to use the Products, Software or Services or maintain your credit card information on file, then Nutshell may terminate your license.

You agree that you have seven (7) calendar days from the date that your license was renewed to elect to discontinue your use the Products, Software or Services. If you elect to discontinue your use of the Products, Software or Services within this period, you will be issued a full refund for the amount of your current license renewal. You are responsible for ensuring that Nutshell has current and accurate records necessary, to renew your license, including without limitation, your credit card payment data.

At no time, will a refund be issued for a Service period of less than one calendar month. Nutshell does not offer any refunds for purchases of the Products, Software or Services, except as expressly provided in this Agreement.

Intellectual Property

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Term and Termination

This Agreement is effective upon any use including during a Trial Period of Nutshell's Products, Software or Services and remains in effect until your account is terminated.

This Agreement automatically terminates if you fail to comply with its terms and conditions. Nutshell reserves the right to refuse or discontinue participation to any user at any time at its sole discretion. You agree that, upon such termination, you will discontinue all use of the Products, Software or Services and that your access rights will immediately terminate.

The terms of the Sections entitled Consent to Collect Non-Personal Information; Intellectual Property; Disclaimer of Warranties; Limitation of Liability; Governing Law, Dispute Resolution, and Venue; and Entire Agreement and Assignment will survive expiration or termination.

If this Agreement terminates, other than for your failure to comply, Nutshell will use commercially reasonable efforts to make your Data available for you by request only for a period of thirty (30) days. Nutshell has no obligation to provide you with a copy of your Data and may remove and discard any Data.

Disclaimer of Warranties

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YOU UNDERSTAND AND AGREE THAT YOU USE THE PRODUCTS, SOFTWARE OR SERVICES, AND ALL THIRD PARTY SOFTWARE OR SERVICES MADE AVAILABLE IN

CONJUNCTION WITH OR THROUGH THE PRODUCTS, SOFTWARE OR SERVICES, AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE PRODUCTS, SOFTWARE OR SERVICES AND SUCH THIRD PARTY SOFTWARE AND SERVICES.

SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL NUTSHELL, OR ITS SUPPLIERS, RESELLERS, PARTNERS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE PRODUCTS, SOFTWARE OR SERVICES, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF NUTSHELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

WITHOUT LIMITING THE FOREGOING, THE TOTAL AGGREGATE LIABILITY OF NUTSHELL, AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO NUTSHELL FOR THE PRODUCTS, SOFTWARE OR SERVICES. IF THE PRODUCTS, SOFTWARE OR SERVICES ARE PROVIDED WITHOUT CHARGE, THEN NUTSHELL AND ITS SUPPLIERS SHALL HAVE NO LIABILITY TO YOU WHATSOEVER.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE PRODUCTS, SOFTWARE OR SERVICES, FROM INABILITY TO USE THE PRODUCTS, SOFTWARE OR SERVICES, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE PRODUCTS, SOFTWARE OR SERVICES (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, OR DIRECT DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

THE PRODUCTS, SOFTWARE OR SERVICES ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND LICENSEE AGREES THAT LICENSOR WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE PRODUCTS, SOFTWARE OR SERVICES.

Export Restrictions and Enforceability

You acknowledge and agree that the Products, Software or Services which are the subject of this Agreement, may be controlled for export purposes. You agree to comply with all United States export laws and regulations. You assume sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation. If you are located in a country subject to embargo by the United States government, you are not entitled to use the Software or Service.

The failure of Nutshell to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

Governing Law, Dispute Resolution, and Venue

This agreement will be governed by and construed in accordance with the laws of the State of Michigan, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

All domestic (U.S.) disputes arising under or relating to this Agreement shall be resolved by final and binding arbitration conducted before a single arbitrator pursuant to the commercial arbitration rules of Resolute Systems, Inc. that were in force as of April 30, 2008. Notwithstanding the provisions governing domestic dispute arbitration, any dispute arising under this Agreement that involves a dispute between Nutshell and a person who

is neither a citizen nor a resident of the United States, shall, at either party's request, be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, with such arbitration to be conducted in USA.

The administrative expenses, arbitrator fees, and facility charges associated with the arbitration, whether domestic or international, shall be split equally between the parties. Each party shall be solely responsible for its attorney fees, expert witness fees, and other costs, fees, and expenses.

The arbitrator shall render a naked award. Judgment on any arbitral award under this Agreement may be entered in any court of competent jurisdiction. It is the intent of the parties that neither the award nor any resulting judgment have res judicata (claim preclusion) or collateral estoppel (issue preclusion) effects except as between the parties themselves.

The arbitration undertaking in this Agreement shall be governed by, construed, and interpreted in accordance with the Federal Arbitration Act, 9 U.S.C. 1 et seq. and, in the case of arbitrations involving one or more non—U.S. parties, by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the U.S. legislation implementing the same, 9 U.S.C. 201 et seq.

To the extent that the Arbitration provisions of this Agreement do not apply, this Agreement will be subject to the exclusive jurisdiction of the state and federal courts serving Washtenaw County, Michigan, United States, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts, except that nothing will prohibit Nutshell from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

Entire Agreement and Assignment

This Agreement, which incorporates the Nutshell Privacy Policy, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Nutshell.

You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Nutshell. Nutshell may freely assign this

Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.

Inquiries

All inquiries to Nutshell about this Agreement or the Privacy Policy should be made by emailing policies@nutshell.com.