

General Terms and Conditions

SmartNow B.V.

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SmartNow

Table of Contents

Definitions	3
Scope and applicability	5
Offers	6
Performance of the Agreement	6
Delivery of the Services	6
Services	7
Support	8
User account and software use	8
Maintenance	9
Intellectual Property Rights	9
Fees invoicing and payment	11
Liability	12
Indemnification	12
Force Majeure	13
Start date of the Agreement and early termination	14
After termination of the Agreement	15
Privacy	15
Warranties	15
Confidentiality	16
Other provisions	16
Applicable law and choice of forum	17

ARTICLE 1 DEFINITIONS

In these Terms and Conditions the terms have the following meaning:

“Agreement” refers to the agreement between Supplier and the Customer pertaining to the provision of Services and/or Supported Hardware by the Supplier, including the annexes and any amendment to such agreement.

“Business Days” means Monday up to and including Friday, and excluding public holidays in the Netherlands.

“Business Hours” means the hours between 09:00 and 17:00 hours CET.

“CoMo Portal”: means the web portal provided by Supplier to Customer, whereby the Customer can upload the Customer Data and download the Generated Data.

“Confidential Information” means any information that is not public knowledge and which is obtained from the other party in the course of, or in connection with, the Agreement. The Supplier’s Confidential Information includes, but is not limited to, the Intellectual Property Rights.

“Consumer” means the person using the Machines of the Customer that are connected by Supplier, in which the Consumer is a data subject, as defined in article 4(1)GDPR. The Supplier does not enter into a contractual relationship with the Consumers of Customer.

“Customer” means the natural person and/or legal entity engaging Supplier to provide the Services under the Agreement.

“Customer Data” means the anonymized data of the Consumer(s), which is uploaded by the Customer by means of the CoMo Gateway or directly via API or via manual file upload to the CoMo Portal for the provision of the Services by Supplier.

“CoMo Gateway” means the gateway as delivered to Customer, which is used to enable data traffic from and to attached machines and to make the data available to Customer. Furthermore the CoMo Gateway offers the possibility to communicate with several payment modules.

“Components” means all (hardware) equipment delivered by Supplier.

“Generated Data” means the data which is made available through the Software of Supplier for the provision of Services.

“General Terms and Conditions” means these general terms and conditions of Supplier that govern the relationship between Customer and Supplier and are applicable to the Agreement, the Service Level Agreement (if applicable) and/or any such Annexes and/or amendments thereto.

“Intellectual Property Rights” means all intellectual property rights, including but not limited to copyrights (also future copyrights), registered and unregistered trademark rights, granted and applied for patents, domain names, registered and unregistered design rights, database rights, know-how, rights with the same and similar purport or nature as the preceding rights and other rights which arise from the Services, including the Software and including the Generated Data.

"In Writing" means all messages which are recorded in writing, including e-mail messages.

"Legislation" means all current and future European and national legislation and regulations and codes of conduct in regard to the protection of Personal data of natural persons, including (but not limited to) the General Data Protection Regulation (GDPR) and General Data Protection Regulation (Implementation) Act.

"Machines" means the machines owned and/or exploited by Customer which are connected to the products of Supplier and may contain values with respect to transactions of Consumer(s), Consumption of Consumer(s), error codes and service reports.

"Maintenance" means the work that Supplier needs to carry out with respect to the supplier Software, whereby Supplier carries out three types of Maintenance:

- **"Preventive Planned Maintenance"** which means fixed periodical maintenance windows used by Supplier for regular (short) maintenance to the Software and the IoT-infrastructure;
- **"Preventive Unplanned Maintenance"** which means unplanned large maintenance (for changes or alterations to the Software); and
- **"Corrective Maintenance"** which means maintenance, in so far as is necessary, used in order to solve (urgent) problems to the Software.

"Offer" means every written offer or quotation by Supplier to provide Services and/or Supported Hardware to the Customer.

"Party (Parties)" means either Supplier and/or Customer.

"Service(s)" means any service provided by Supplier to Customer on the supplied services as defined in article 6.1 of these General Terms and Conditions.

"Service Level Agreement (SLA)" means, if applicable, an agreement between Supplier and Customer that stipulates particular aspects of the Service(s), Support and Maintenance provided by Supplier.

"Software" means software, which is developed and/or hosted by Supplier and/or third parties contracted by Supplier to provide such services.

"Support" is the support delivered by Supplier to Customer on the supplied services as defined in article 7.1 of these General Terms and Conditions.

"Supported Hardware" means all Hardware Components delivered by Supplier.

"Supplier" means SmartNow B.V., the company with limited liability, duly incorporated and validly existing under the laws of the Netherlands, having its registered place of business in Haarlem, the Netherlands, and having its principal place of business at Zijlweg 148-A, 2015 BJ Haarlem, The Netherlands, and listed in the Commercial Register of the Dutch Chamber of Commerce under number 63620162.

"User Account" means the personal digital environment of the Customer within the Services, to which the Customer has access by using the available authentication methods and the authentication data provided;

"WoT" means Web of Things and are the various components and functions within the context of the Customer's business environment.

In these General Terms and Conditions references to “**Anonymisation**”, “**Personal Data**”, “**Processing**”, will have the meanings as defined in the General Data Protection Regulation (“**GDPR**”).

ARTICLE 2 SCOPE AND APPLICABILITY

- 2.1. The General Terms and Conditions govern all legal acts between Parties, including, but not limited to, Offers, the Agreement, subsequent agreements and any Service Level Agreements (SLAs).
- 2.2. Before Parties enter into the Agreement, the text of these General Terms and Conditions will be made available to Customer.
- 2.3. Should the Agreement be entered into digitally, the text of these General Terms and Conditions will be made available to Customer digitally in such a way that the General Terms and Conditions can easily be stored on a durable medium by the Customer. Should this not reasonably be possible, an indication of where these General Terms and Conditions can be digitally found or an offer that these can be sent - digitally or otherwise - to the Customer free of charge will be given prior to the Agreement being effected.
- 2.4. Customer is obligated to accept the General Terms and Conditions before entering into the Agreement, in the absence thereof no Agreement will be effected.
- 2.5. By signing the Agreement the Customer declares that it has received a copy of the General Terms and Conditions and that it accepts the applicability and the provisions of the General Terms and Conditions.
- 2.6. In the event that Supplier deviates from these General Terms and Conditions with respect to the Agreement with Customer, the deviations are effective only if the variations have been expressly agreed between the Parties In Writing. The expressly agreed on derogations shall prevail over the General Terms and Conditions. Should Supplier deviate from these General Terms and Conditions in one or more Agreements with Customer, such deviation does not apply to any previous or future Agreement(s) between Supplier and the Customer. Supplier is not obligated to adhere to a request for derogations to the General Terms and Conditions.
- 2.7. The General Terms and Conditions apply to the provision of the Service(s) by Supplier and/or third party/parties and/or Supported Hardware who have been engaged by Supplier to partially or fully execute the performance of the Service(s) on behalf of Supplier.
- 2.8. The applicability of General Terms and Conditions of Customer and/or third parties is explicitly rejected.
- 2.9. Should Supplier not require strict observance of these General Terms and Conditions, such does not mean that its articles are in any way not applicable, or that General Terms and Conditions would in any way forfeit its right to demand strict observance of the articles in these General Terms and Conditions in the future and/or with respect to (any) other situation(s) and/or third parties.
- 2.10. Should one or more articles in these General Terms and Conditions be in conflict with the Agreement and/or the SLA then the following hierarchy of the documents shall apply:
 1. The Agreement.
 2. The SLA.
 3. The General Terms and Conditions.

ARTICLE 3 OFFERS

- 3.1. All Offers of Supplier are without obligation and shall be valid for the period of time as indicated by Supplier. Should Supplier not indicate a period of time in its Offer, the Offer shall always automatically lapse after 14 calendar days. All Offers may be revoked by Supplier at any time, also when the Offer contains a period for acceptance.
- 3.2. Should the Customer accept an Offer, Supplier shall nevertheless be entitled to revoke its Offer, verbally or In Writing, within 30 calendar days after receipt of the acceptance, in which case no Agreement was effected between Parties.
- 3.3. Supplier cannot be held to its Offer in case Customer may reasonably assume that the Offer, or part thereof, includes an obvious error or typo. Any documents which are part of the Offer including price lists, tender letters and such were made with the utmost care but are without obligation. These are only used to provide details to the Customer and shall not bind SmartNow in any way.
- 3.4. An Agreement is only affected when the Customer accepts the unaltered Offer made by Supplier In Writing. Should the Customer place an order with Supplier orally or In Writing without this being preceded by an Offer or when the Offer is not signed by both Parties, the Agreement shall be considered effective when the order is confirmed by Supplier In Writing or when Supplier starts the execution of the order at the request the Customer.

ARTICLE 4 PERFORMANCE OF THE AGREEMENT

- 4.1. Upon the effectuation of the Agreement and the fulfilment of the terms of the Agreement, as well as the fulfilment of the obligations to which the Customer is subject, the Contractor shall proceed with the delivery of the Services as recorded in the Agreement.
- 4.2. Terms in these General Terms and Conditions shall always be target terms and are never considered final deadlines unless Parties explicitly agree otherwise In Writing. Supplier will endeavour to observe the terms where possible, but the mere exceeding of the delivery time shall not constitute a failure in the performance. Delays in the agreed on term shall never entitle the Customer to terminate or discontinue the Agreement nor to any damages.

ARTICLE 5 DELIVERY OF THE SERVICES

- 5.1. Supplier shall perform its activities to the best of its knowledge and ability and in accordance with high standards, without Supplier issuing any guarantees, under the condition that Supplier will be properly informed by the Customer during the performance of the Agreement. The obligations of Supplier have the nature of a best efforts obligation.
- 5.2. Notifications by or on behalf of Supplier with respect to the delivery, quality and possibilities of application of the delivered Services and Components shall only be considered guarantees when these have been confirmed as a guarantee (using the word "guarantee") by Supplier explicitly and In Writing.
- 5.3. The minimum delivery time for Supported Hardware and Components is 8 weeks after formal agreement on the order and the minimum delivery time for Software development is 12 weeks. An agreed delivery time or execution period is never a strict deadline. If a formally agreed delivery time is exceeded by more than three months, Customer must give Supplier notice of default in writing, whereby Supplier must be given a reasonable period of at least 2 weeks in which to comply. If this extended term or another strict term is exceeded, Customer is only authorized to dissolve the Agreement insofar as no goods have yet been delivered or Services have been performed. However, Supplier is never liable for direct damage or indirect damages as a result of delays.

- 5.4. The risk of loss, theft or damage to items that are the subject of the Agreement transfers to Customer at the moment when they are placed in the actual possession of Customer or an auxiliary person of Customer. If a carrier is used for the delivery, whether or not at the request or instruction of Customer, the risk of loss, theft and damage to the item will already pass to Customer at the time of delivery of the goods to the carrier.
- 5.5. Customer must inspect the delivered item upon delivery. Visible defects or omissions must be reported to Supplier in writing immediately but at the latest within 24 hours after delivery, failing which the customer is deemed to have accepted the goods without reservation.
- 5.6. Customer accepts in advance any changes made to or in the Components or Services by a manufacturer and/or Supplier to improve their proper functioning.

ARTICLE 6 SERVICES

- 6.1. The Services consist of Supplier providing a non-exclusive, non-transferable license to Customer for the use of the Software with the purpose of enabling the Customer to collect Generated Data from connected Machines and process this Generated Data into information and/or send data to connected Machines.
- 6.2. Although Supplier aims to provide Customer the best Services, Supplier cannot provide any guarantees with respect to the access of the Services, the underlying Software, the functioning and the Software.
- 6.3. The Customer accepts the Services and the underlying Software as they are (“as is” and “as available”).
- 6.4. Without prejudice to the provisions in article 12 the unavailability of the Services and the underlying Software and/or the non-performance (or not correct performance) of the Services and/or the underlying Software, and/or provide Information and/or the not optimally functioning thereof, for whatever reason, shall not constitute a ground for liability of Supplier towards the Customer.
- 6.5. Supplier does not offer a standard service level to the Customer except as is specifically stated in these General Terms and Conditions and in a SLA.
- 6.6. Supplier is never obligated to repair any defects in the Software.
- 6.7. Supplier shall never be obligated to:
 - a. provide connections to third parties, such as, but not limited to, linking of the Services and the underlying Software to, or in any other way combine with, a product, software or service of the Customer or a third party, unless otherwise expressly agreed on In Writing in the Agreement and/or the SLA;
 - b. implement the Services and the underlying Software on the website and/or the platform of the Customer;
 - c. follow specific directions and/or instructions from the Customer, for instance in regard to the adjustment of the Services and the underlying Software.
- 6.8. The Supplier is not obligated to provide Customer with supplementary Services, other than those that have been agreed on in the Agreement.
- 6.9. The Customer must provide the Supplier with all information reasonably required for the Supplier to provide the Services.
- 6.10. The Services are only applicable on Supplier’s certified Machines with Supplier’s certified software versions.
- 6.11. Changes made in Machine hardware or Machine software can result in loss of functionality and is not within the responsibility of Supplier. Customer will inform Supplier of changes in Machine hardware and / or software.
- 6.12. Supplier is entitled to (temporarily) pause the Services and the underlying Software and/or to render access to the Services and the underlying Software temporarily unavailable in order to carry out maintenance work; the Customer cannot derive any rights from this.

ARTICLE 7 SUPPORT

- 7.1. Supplier shall provide Customer with Support regarding incidents that are related to Supplier's Services and/or Supported Hardware.
- 7.2. Supplier shall provide Support on Business Days and during Business Hours.
- 7.3. Customer will report incidents that fall under the scope of the Support as follows, either:
 - 7.3.1. via email, in which event Customer must concisely describe the incident in the email, use the e-mail address support@smart-now.com and the subject matter "Support: (followed by the description of the issue)". After receipt of the email which meets the aforementioned conditions; or
 - 7.3.2. by telephone, in which event Customer can use the telephone number +31 20 8943777. Customer must clearly state a description of the incident and provide enough details to start investigation of the incident.
- 7.4. After receipt of the report of the issues, as stated in article 7.3, and provided that the report meets the conditions stated in articles 7.3.1 or 7.3.2, Supplier will issue a service ticket, which will be used to manage and report the processing of the Support Services.

ARTICLE 8 USER ACCOUNT AND SOFTWARE USE

- 8.1. The Customer is fully and solely responsible for the management of the User Account, including the settings and the details that are entered into the User Account, the use of the Software and the use of the Generated Data.
- 8.2. The Customer is obligated to only use or integrate the Supported Hardware and Software in accordance with the guidelines of Supplier.
- 8.3. Without prejudice to the other provisions in these General Terms and Conditions, the Customer is not allowed to use the Software as a white label, such in the broadest sense of the word, unless this has been arranged in the Agreement.
- 8.4. The Customer itself is responsible for the safeguarding of the security and the confidentiality of the username and password with which it has access to the Services and the underlying Software. The Customer is responsible for providing third-party access to the Services and the underlying Software and is liable for any damages which may subsequently arise on the side of Supplier and/or third parties, this also applies in situations in which approval from Supplier is obtained before access to the Services and the underlying Software is granted to these third parties.
- 8.5. The Customer is obligated to immediately inform Supplier when it establishes or suspects abuse of user name and password of the User Account; the Customer is responsible for taking immediate action, such as changing its username and password.
- 8.6. The Customer itself is responsible for choosing the correct resources required for the proper use of Services and the underlying Software, including computers, data and means of telecommunication and a functioning internet connection.
- 8.7. The Customer is obligated to allow Supplier a timely and correct performance of the Services and shall ensure that all data required by Supplier for the performance of the Services shall be issued to Supplier in a timely, correct and complete manner. Supplier is entitled to suspend the performance of its Services as long as the Customer does not fulfil the obligations, such without obligation to pay compensation for any damage or loss. The extra hours and/or extra costs incurred by Supplier as well as any other current or future damages payable by Supplier resulting from the Customer not (timely) fulfilling its obligation to provide information, shall be charged to the Customer in accordance with the customary rates at that time.

- 8.8. The Customer is not permitted to use the Services (or arranging for third parties to use the Services) in such a way that the Software, the Services and/or the good name or reputation of Supplier is damaged.
- 8.9. The Customer guarantees and warrants that:
- a. it and any third parties engaged shall comply with the obligations arising from these General Terms and Conditions and the Agreement at all times and that they shall comply with all applicable Legislation and regulations to which its activities are subject;
 - b. it and any third parties engaged shall not use the Services and the underlying Software for any other purpose than for which they were issued and that it shall not use the Services and the underlying Software in order to copy or replace them or in any other way compete with Supplier, nor shall it make changes to the Software without receiving prior permission from Supplier In Writing;
 - c. the Data which is processed by Customer and any third parties involved through the use of the Software in the User Account and the CoMo Portal and/or the use of the results of the Services, including, but not limited to the Generated Data do not infringe on intellectual property rights of third parties, are not contrary to any applicable Legislation and regulations, is not contrary to public order or morality and does not invade the private life of third parties;
 - d. it and any third parties engaged shall not perform or contribute to any activities which could be labeled unethical marketing, deception, unfair trade practices or fraud;
 - e. it and any third parties engaged by Customer shall not try to gain access to the external servers managed by Supplier and that it and any third parties engaged by Customer shall not (try) to interrupt, disrupt or otherwise hinder the functionalities of the Services and the underlying Software;
- 8.10. The Customer acknowledges that Supplier has no control over the Customer Data and the Generated Data that is processed through the Services in the User Account and the CoMo Portal and/or the underlying Software. The Customer indemnifies Supplier against any third party claims arising from the processing of the Customer Data by the Services and the underlying Software in the User Account.
- 8.11. The Customer must prevent excessive system load or network load measures. Supplier is entitled to suspend the Services and any other obligations arising from the Agreement in the event of a continuous excessive system and/or network load.

ARTICLE 9 MAINTENANCE

- 9.1. Supplier provides three types of Maintenance to the Software, namely: Preventive Planned Maintenance, Preventive unplanned Maintenance and Corrective Maintenance.
- 9.2. In principle Supplier will take the following notification time into account before commencing the maintenance: with respect to (i) Preventive Planned Maintenance (10 business days); (ii) Preventive unplanned Maintenance (48 hours before commencing the Maintenance), and (iii) Corrective Maintenance (the notification will be sent as soon as possible but considering the nature of the maintenance the maintenance could be followed by a brief notification period).

ARTICLE 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1. The Customer acknowledges and agrees that all Intellectual Property Rights, all results of the Services and all user information and databases generated through its use are held by Supplier or her licensors, with the exception of Customer Data. In the event that the Intellectual Property Rights may only be obtained by means of registration, Supplier is exclusively entitled to such a registration.

- 10.2. The Customer acknowledges and agrees that the brand, logo and the trade names of Supplier, including but not limited to "SMARTNOW", including all domain names, email addresses and company names which include the word and/or logo of "SmartNow", are intellectual property which is exclusively owned by Supplier.
- 10.3. Nothing in these General Terms and Conditions, the Agreement or other actions by Supplier is intended to transfer the Intellectual Property Rights or in any other way assign any other rights in regard to the Intellectual Property Rights to the Customer, unless otherwise explicitly included in the General Terms and Conditions and/or the Agreement.
- 10.4. The Customer shall at all times respect all Intellectual Property Rights of Supplier and shall not make any adjustments to the Services (or have any adjustments made by third parties) without the prior written consent of Supplier.
- 10.5. Supplier is always entitled to reproduce or publicize the Software and all other Services and reproduce the results of these Services under its own name as being its own or otherwise exploit and/or use these for promotional purposes.
- 10.6. The Customer's use of the Intellectual Property Rights is limited to the non-exclusive and non-transferable right to use of the Software within the purposes of the Services, if and to the extent that the Customer fulfils its obligations towards Supplier, for the duration of the Agreement. The Customer guarantees that it will not infringe on these Intellectual Property Rights of Supplier or its licensors. The user right as described in these General Terms and Conditions explicitly does not include effective access to the source code of the Software.
- 10.7. The Customer is not entitled to issue (sub) licenses or other user rights to the Intellectual Property Rights (including the use of the Software) to any third parties. The Customer indemnifies Supplier against all damages and/or third party claims caused by any other use than the agreed on use.
- 10.8. It is expressly forbidden to try to decrypt, adjust, alter or develop derivative products or in any other way breach the copyrights of the Software or in any other way "frame", "mirror" or simulate the appearance and the function of the Software.
- 10.9. By making the Customer Data available through the CoMo Portal, the Customer grants to Supplier the right to copy, remove, store, reproduce, analyze, or in any other way use the Customer Data for the performance of the Services for Customer and/or to use the Customer Data in anonymized form for statistical purposes.
- 10.10. Without prejudice its rights under the provisions of the General Terms and Conditions, the Agreement and/or Legislation, Supplier is entitled to immediately suspend or terminate the license, when the Customer fails in the performance of the General Terms and Conditions and/or the Agreement and this failure is not corrected within a reasonable period of time after Supplier has sent a notice of default, or in the event that the failure is not correctable.
- 10.11. Should a court establish that the Services delivered by Supplier or their results infringe the intellectual property rights of (a) third party/parties, Supplier shall – at its expense and discretion – either attempt to (i) acquire the rights to continue the use of the Services for the remainder of the Agreement, or (ii) replace the Services by other services which do not cause an infringement, or (iii) alter the Services in such a way that they do no longer infringe the rights of third parties.
- 10.12. Should Customer identify an infringement on the Intellectual Property Rights of the Services, it shall notify Supplier In Writing and without delay. The Customer is obligated to provide Supplier with all possible assistance - in the broadest sense of the word - should and to the extent that Supplier considers this desirable.

ARTICLE 11 FEES INVOICING AND PAYMENT

- 11.1. For the use of the Services and the underlying Software, Customer must pay Supplier a Licensing Fee. The Licensing Fee is stated in the Agreement. The Licensing Fee is deemed as a usage fee for the Services and the Software. In addition to the Licensing Fee, Supplier may charge Customer (an) hourly rate(s) for providing support which falls outside the scope of the Support, other assistance and other customized services. Such rate(s) are stated in the Agreement, SLA or In Writing.
- 11.2. Unless otherwise stated, the price listed for the Licensing Fee is in euros. The Licensing Fee is exclusive of VAT and other government levies. All prices listed by Supplier are based on pricing factors relevant at the time of the Offer or the signing of the Agreement.
- 11.3. The Licensing Fee is inclusive of any updates and new versions of the Software.
- 11.4. Supplier has the right to yearly index the Licensing Fee according to the Services producer price index (SPPI) (Dienstprijzen; commerciële dienstverlening en transport) of the Statistics Netherlands (Centraal Bureau voor de Statistiek).
- 11.5. The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Customer in return for this service, without prejudice to the Customer's right to submit evidence to the contrary.
- 11.6. When making Offers, Supplier assumes that it will be able to carry out its duties under normal and usual circumstances. In the event that special circumstances arise as a result of which Supplier incurs subsequent costs, Supplier shall notify the Customer and Supplier shall be entitled to charge these subsequent costs to the Customer.
- 11.7. The Customer must pay the Supplier's invoice in full within 30 days after the date of invoice.
- 11.8. The Customer is never entitled to any suspension of payment nor to any setoff of any amounts payable to Supplier with any claims it might have with respect to Supplier.
- 11.9. Should the Customer be one or multiple natural persons and/or legal entities, each of these persons or entities is jointly and severally liable to pay the outstanding amount. They shall each be considered a several debtor.
- 11.10. Payments made by the Customer shall first be applied to settle the costs, then the interest that has fallen due and finally the principal, and shall first be applied to the oldest outstanding amounts before being applied to any newer amounts due.
- 11.11. Should the Customer fail to pay the outstanding amounts or fail to pay in time, Supplier is entitled to charge the Customer with an interest of 8% over the outstanding amount (including VAT), such without prejudice to any of its rights under the provisions of the Legislation and/or Agreement and without any demand or notice of default being required. Should the Customer remain in default after receiving a demand for payment or notice of default, Supplier may pass on a claim for collection, without prejudice to its other rights, in which case the Customer shall be obliged to pay the total outstanding amount as well as compensation for the judicial and extrajudicial costs which amount to 15% of the total amount due (inclusive of VAT).
- 11.12. Supplier is entitled to change its price and rates taking into account a notice period of at least 3 (in words: three) months. Should the Customer not agree to said change, the Customer shall be entitled to terminate the Agreement In Writing within 30 days with effect from the date on which the change would become effective. The aforementioned notice period and right to terminate does not apply in the event of the increase of the price pursuant to article 11.4. (indexation) or when the prices are increased in connection with unforeseen cost-increasing circumstances which have occurred after the conclusion of the Agreement.

ARTICLE 12 LIABILITY

- 12.1. Should it be established by the court or otherwise that Supplier were to be liable towards the Customer for damages suffered out of or in connection with the Agreement, the General Terms and Conditions, the SLA, or arising from a wrongful act, or on any other basis, this liability, including any payment obligation pursuant to article 6:230 Dutch Civil Code and/or article 6:271 Dutch Civil Code, shall be limited to the amount as stated in article 12.7:
- 12.2. Supplier shall never be liable for damages arising from Supplier use of any (incorrect) Customer Data provided by Customer, or for any damages arising from interruptions in the internet connectivity or interruptions on the Supported Hardware that is used by the Customer of the Software;
- 12.3. Supplier shall never be liable for Customer suffering any lost profits, lost income, lost turnover, lost savings, loss due to business interruption or other interruption, nor for any damages excluded elsewhere in these General Terms and Conditions and/or the Agreement and/or the SLA.
- 12.4. Supplier shall never be liable for damages and/or costs in connection with or arising from any inconsistencies in Generated Data obtained from or arising from the use of the Services by the Customer.
- 12.5. Without prejudice to the foregoing, Supplier's liability, including any payment obligation under an obligation to undo and any payment obligation under article 6:230 Dutch Civil Code, towards the Customer is at all times limited to the amount covered by Supplier's liability insurance.
- 12.6. In the event that Supplier's liability insurance does not – for whatever reason – cover a claim, Supplier's liability, including any payment obligation pursuant to article 6:230 Dutch Civil Code and/or article 6:271 Dutch Civil Code, is limited to the net amount paid by Customer to Supplier with respect to the License Fee in the last 6 months.
- 12.7. The total liability – irrespective of the number of events giving rise to the damage – shall never amount to more than the net amount paid by Customer to Supplier with respect to the License Fee in the last 6 months.
- 12.8. Damages for which Supplier can be held liable should be reported to Supplier without delay but always within 30 calendar days after the occurrence of said damage, stating the cause and the scope of the damages, such at the risk of such a claim lapsing. This term does not apply when Customer can make a plausible case that the damages could not be reported sooner for well-founded reasons.
- 12.9. A liability claim towards Supplier lapses within 12 months upon the Customer becoming aware of the fact from which the damages arise or may reasonably be assumed to have been aware of.
- 12.10. The aforementioned limitations of liability do not apply in case of intent or deliberate recklessness of Supplier and/or its managers and/or in the event the damages consist of personal injury or death.
- 12.11. Each Party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement and/or the General Terms and Conditions and/or the SLA.

ARTICLE 13 INDEMNIFICATION

- 13.1. Customer shall be fully liable and at its own expense fully defend, indemnify and hold Supplier, and third parties, harmless from and against any damages, expenses, losses or costs that Supplier or any third party suffers, may suffer and incur resulting from or in connection with Customer's failing in the performance of the Agreement and/or the General Terms and Conditions and/or the SLA and/or the uploading of Personal Data to the Software through which it is Processed by Supplier (in violation of article 17.3 of these General Terms and Conditions) and/or the non-compliance of the Legislation by Customer, irrespective of whether such damages, expenses, losses or costs were caused by Customer, its employees, staff or another (legal) person or company for which Customer is liable by law.
- 13.2. The indemnification will include, without limitation, legal costs of Supplier and/or third parties, including, but not limited to attorney's fees, court costs, and the costs of any third party, such as a bailiff or an expert, as well as any award of damages and/or the cost of any settlement.
- 13.3. In the event that Supplier is confronted with a claim and/or litigation, it shall have the right, at its own discretion, to either defend the matter through counsel of its own or have Customer defend the matter through counsel, and both at the entire cost of the Supplier, for which the reimbursement rules of paragraph 4 of this article 13 shall apply.
- 13.4. In the event that Supplier has to incur the expenses, losses and/or legal costs, as defined in paragraph 1 of this article 13, Supplier shall have the right to demand that any and all invoices be sent to Customer directly and paid by Customer and/or to have Supplier pay an advance to Supplier, and/or to implead Customer in court proceedings.
- 13.5. Supplier shall have the right, at its sole discretion, to settle any charge, claim or litigation brought against Supplier and/or third parties.
- 13.6. Supplier and Customer shall each provide to the other all available information as may be reasonably necessary to defend a charge, claim or litigation.
- 13.7. Customer will provide for adequate insurance in order to cover the risks in these General Terms and Conditions. The Customer is obligated to demonstrate its compliance with this obligation immediately on request of Supplier. The Customer shall always bear the cost of any policy excess. Should the Customer be able to claim insurance coverage of its liability towards Supplier, Customer must ensure that any insurance payments shall be made out to Supplier directly. Any insurance payment to Supplier based on an insurance agreement taken out by Customer does not impair Supplier's right to claim damages from the Customer to the extent that those exceed the insurance payment.
- 13.8. Should the Customer fail to take adequate measures, Supplier is entitled, without notice of default, to take these measures itself. All damages, expenses, losses and costs on the part of Supplier and third parties subsequently arising will be wholly at expense and risk of the Customer.

ARTICLE 14 FORCE MAJEURE

- 14.1. Parties shall not be liable towards each other for any failures (with the exception of payment obligations of Customer) in the performance of the Agreement and/or the General Terms and Conditions and/or the SLA should the performance of the Agreement be hindered by force majeure (overmacht, as defined in article 6:75 of the Dutch Civil Code), for the duration of the force majeure situation. Force majeure will mean any circumstances beyond the control of a Party, whether foreseeable, which render the performance of the Agreement and/or the General Terms and Conditions and/or the SLA impossible, whether temporarily or indefinitely, including, but not limited to, war, danger of war, civil war, riots, work strikes, boycott, blockade, sabotage, fire, lightning strike, extreme weather conditions, measures of the national or foreign government.

- 14.2. Force majeure on the part of Supplier will also include the impossibility of performance of the Agreement as a result of failure on the part of any third parties, suppliers, persons and/or objects which were involved by the Supplier in the performance of the Agreement and/or the General Terms and Conditions and/or the SLA as well as interruptions of internet, energy and servers.
- 14.3. In the event of force majeure, the Party relying on force majeure must inform the other Party of the force majeure situation In Writing. Should the force majeure situation surpass a period of 3 months, both Parties shall be entitled to terminate the Agreement In Writing.

ARTICLE 15 START DATE OF THE AGREEMENT AND EARLY TERMINATION

- 15.1. An Agreement for the delivery of Services shall be entered into for a period of (minimum) 5 (in words: five) years, unless otherwise agreed on in the Agreement, and can be terminated by either of the Parties at the end of this period with a notice period of 3 (in words: three) months. If the Agreement is not terminated in the way as described in the previous sentence, it will be automatically renewed for the same period unless Supplier terminates the agreement early (in accordance with article 15.2 hereafter).
- 15.2. Supplier is entitled to terminate the agreement early with due observance of a notice period of 3 (in words: three) months. An Agreement cannot be terminated early by the Customer, with the exception of the specific provisions in these General Terms and Conditions and any provisions specifically included in the Agreement.
- 15.3. Should the Customer fail in the performance of its obligations arising from the Agreement and/or the General Terms and Conditions and/or the SLA and/or when Supplier has proper ground to fear that the Customer shall fail in the fulfilment of its obligations, Supplier is authorized to suspend or block all its obligations on account of the Agreement with immediate effect including the availability of the Services (including the access of the Customer to the User Account) without prejudice any other rights of Supplier (arising from the Legislation and/or the Agreement and/or the General Terms and Conditions), including the right to claim damages and performance of the Agreement.
- 15.4. Supplier is entitled to terminate the Agreement, without notice of default being required, when:
- in the opinion of Supplier, the Customer damages the image or the reputation of Supplier;
 - the Customer does not, not fully or not timely fulfil any of its obligations pursuant to the Agreement and/or the General Terms and Conditions and/or the SLA and/or any of its obligations under the Legislation;
 - if and when circumstances brought to the attention of Supplier after the formation of the Agreement give Supplier good ground to fear that the Customer cannot meet its obligations and/or when Supplier finds that the current or future claims cannot be secured;
 - if and when delays on the part of Customer mean that Supplier can no longer reasonably be expected to fulfil the Agreement and/or the General Conditions and/or the SLA on the original conditions;
 - if and when circumstances arise which render fulfilment of the Agreement and/or the General Conditions and/or the SLA impossible or if any other circumstances arise the nature of which entail that the unaltered maintenance of the Agreement and/or the General Conditions and/or the SLA cannot reasonably be expected from Supplier.

- 15.5. Either Party is entitled to terminate the Agreement, without notice of default or a notice period being required, if and when:
 - a. the other Party is granted a suspension of payment or applies for suspension of payment;
 - b. the other Party is declared bankrupt;
 - c. the other Party has lost the power of disposition of its assets through attachment, guardianship or in any other way;
 - d. the company of the other Party ceases or is liquidated.
- 15.6. Should Supplier terminate the Agreement or suspend its obligations under the Agreement and/or the General Terms and Conditions and/or the SLA, Supplier can never be held to any restitution of money it has received or to any compensation of damages.
- 15.7. Should the termination be attributable to the Customer, Supplier is entitled to compensation of the damages, including any costs arising directly and indirectly from the occurrence.

ARTICLE 16 AFTER TERMINATION OF THE AGREEMENT

- 16.1. In the event of termination of the Agreement, all claims Supplier has with respect to Customer become immediately due and payable.
- 16.2. After the termination of the Agreement, Supplier is no longer obligated to provide its Services and/or Support and/or Maintenance.
- 16.3. Termination of the Agreement does not affect each party's rights and obligations accrued before the expiry or termination date.
- 16.4. After the termination of the Agreement, the articles in these General Terms and Conditions regarding the Intellectual Property Rights, confidentiality, liability, privacy and customer data, and applicable law and choice of forum, will remain in full force.
- 16.5. In the event of a (albeit premature) termination of the Agreement, the Customer is obligated to immediately cease and desist its use of the Software, new version(s), including all changes and/or expansions of it and other Services provided by Supplier and/or third parties for the purposes of its activities under the Agreement, subject to an immediately payable penalty of € 5,000,- (in words: five thousand euro) per day (or a part of a day) that the breach continues, without prejudice to the right of SmartNow to claim performance and/or damages or to its right to institute proceedings.

ARTICLE 17 PRIVACY

- 17.1. Parties acknowledge that through the use of the Services and/or the Software no Personal data, is Processed. The Customer Data that Supplier receives, consists of data that has been Anonymized.
- 17.2. The Customer acknowledges that it shall be solely responsible for the Anonymisation of the Customer Data and that it shall take all such measures appropriate technical and organisational measures, as defined in article 32(1)-(4) of the GDPR, that are necessary. Moreover, Customer acknowledges that the Supplier has no control over nor access to the identifier by which the Customer Data can be linked to a Consumer.
- 17.3. The Customer guarantees that it shall not include any Personal Data in the Consumer Data or otherwise upload such data to the Software so as to avoid the Processing of Personal Data.
- 17.4. The Customer acknowledges that the Supplier has no control over the purposes for which the Customer uses the Generated Data and/or the passing on of the Generated Data to third parties.

ARTICLE 18 WARRANTIES

- 18.1. With respect to Supported Hardware Supplier gives a warranty of 12 months carry in warranty, subject to the exclusions of article 18.5 hereafter.
- 18.2. The warranty, as stated in article 18.1, covers faulty material and production errors of any kind which may occur in normal use. The Supplier reserves the right to refuse a repair under warranty if the entitlement to warranty cannot be established.
- 18.3. In the event of a defect covered by this warranty to the Supported Hardware of the Customer, the Supplier guarantees the repair or replacement of the product. The Supplier reserves the right to decide for repair or replacement. Supplier can therefore decide at its discretion, to replace the Supported Hardware submitted by an equivalent, fully reconditioned unit of the same quality. No warranty is given for batteries or accumulators and consumables, i.e. parts that must be replaced periodically during use of the device. When during the repair an error or failure is determined that is not covered by the warranty, the Supplier reserves the right, after an offer to the end user, to charge the repair costs (materials and labor). Customer will be informed in advance and can decide to continue this practice or leave product as is.
- 18.4. In order for the Customer to claim the warranty it must contact the support department of the guarantor before sending in the device, via support@smart-now.com. From there on the Customer will receive information regarding the handling of the warranty. The device must be correctly and safely packed when it is sent. If not stated otherwise in the Agreement or elsewhere in writing, the Customer bears the costs and risks for transport.
- 18.5. In deviation of article 18.1 the warranty given by Supplier is limited as follows:
 - a. for defects and damage caused by external influences, accidental damage, improper use, alterations, extensions, use of foreign parts, neglect, improper transport, improper packaging, improper installation or loss when returning the product, the Supplier cannot be held liable.
 - b. the warranty does not apply if the malfunction is caused by maintenance or repair performed by anyone other than by the Supplier. The warranty is voided when stickers or serial numbers of the instrument or parts of the device are altered or obscured.

ARTICLE 19 CONFIDENTIALITY

- 19.1. Each party agrees that, unless it has the prior written consent of the other party, it will:
 - a. keep confidential at all times the Confidential Information of the other party; and
 - b. ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 19.1.
- 19.2. The obligations of confidentiality in clause 19.1 do not apply to any disclosure:
 - a. for the purpose of performing the Agreement and/or SLA or exercising a party's rights under the Agreement and/or the General Terms and Conditions and/or the SLA;
 - b. required by law;
 - c. of Confidential Information which:
 1. is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 2. was rightfully received from a third party without restriction and without breach of any obligation of confidentiality.
- 19.3. Except to the extent that a Party has ongoing rights to use Confidential Information, a Party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

ARTICLE 20 OTHER PROVISIONS

- 20.1. Should one or more articles in these General Terms and Conditions and/or the Agreement be fully or partially null and void or voided at any time, the other articles of these General Terms and Conditions will and/or the Agreement remain fully in effect. In the event of a null and void or voided article, Parties shall consult one another with the purpose of agreeing to (a) new article(s) that shall replace the nullified or voided articles in such a way that the new article(s) will be in accordance with the object and purpose of the original articles(s) as much as possible. Moreover the remainder of the articles will be interpreted in accordance with the article(s) that was/were voided and/or held fully or partially null and void.
- 20.2. Supplier is entitled to engage third parties for the performance of its Services. These third parties may rely on these General Terms and Conditions.
- 20.3. The Customer is not entitled to sell or transfer the rights and/or obligations arising from the Agreement and/or the SLA to a third party.
- 20.4. Supplier is not entitled to sell or transfer the rights and/or obligations arising from the Agreement and/or the General Terms and Conditions and/or the SLA to a third party nor sell its entitlement to payment to a third party.
- 20.5. Customer may not assign, subcontract or transfer any right or obligation under the Agreement and/or the General Terms and Conditions and/or the SLA.
- 20.6. The Supplier is an independent contractor of the Customer. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement and/or the General Terms and Conditions and/or the SLA.
- 20.7. Supplier is entitled to sell or transfer the rights and/or obligations arising from the Agreement and/or the General Terms and Conditions and/or the SLA to a third party and sell its entitlement to payment to a third party, Customer gives permission for this transfer by the conclusion of the Agreement.
- 20.8. A notice given by a party under the Agreement and/or the General Terms and Conditions and/or the SLA must be In Writing and delivery by courier or in person, or by postal delivery, at the other party's last known physical address, effected by way of registered letter and acknowledgement of receipt.

ARTICLE 21 APPLICABLE LAW AND CHOICE OF FORUM

- 21.1. These Terms and Conditions, the Agreement, the SLA, and the transactions contemplated hereby and thereby, any claims and/or disputes based upon, arising out of or relating to these Terms and Conditions, the Agreement, the SLA and the transactions contemplated hereby and thereby, shall be exclusively governed by, and construed in accordance with, Dutch law, with the exception of rules of international private law which may lead to the applicability of the laws from other jurisdictions. The Vienna Sales Convention (CISG) is expressly not applicable to these Terms and Conditions, the Agreement, the transactions contemplated hereby and thereby, and the SLA.
- 21.2. The district court of Noord-Holland, location Haarlem, will have exclusive competence to deal in first instance with any and all disputes with regard to the performance and/or the execution of the Terms and Conditions, the Agreement, the transactions contemplated hereby and thereby, the SLA (including disputes with regard to the existence and validity of the Terms and Conditions, the Agreement, the transactions contemplated hereby and thereby, and the SLA), whether in contract or tort, and including any disputes relating thereto. Parties shall have the right to use legal remedies against a judgment of said court. The district court of Noord-Holland, location Haarlem, will also have exclusive competence to deal with interim relief proceedings.