

# PLATFORM SERVICE TERMS

Last revised: August 2024

THE TERMS AND CONDITIONS CONTAINED HEREIN ("PLATFORM TERMS") APPLY TO ALL USE OF THE SOFTWARE AND PLATFORM SERVICES (COLLECTIVELY, THE "PLATFORM") PROVIDED BY SMAPPEE TO YOU AND THE ORGANIZATION YOU REPRESENT (TOGETHER, THE "CUSTOMER").

BY ACCESSING OR USING ANY OF SMAPPEE'S SOFTWARE OR PLATFORM SERVICES, THE CUSTOMER AGREES TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

THESE TERMS ARE EFFECTIVE BETWEEN THE CUSTOMER AND SMAPPEE UPON ACTIVATION (IN THE SMAPPEE APP OR DASHBOARD) OF THE LICENSE KEY OF THE SOFTWARE, CONSTITUTING DEEMED ACCEPTANCE OF THESE TERM BY THE CUSTOMER.

IN THE EVENT THERE IS A SEPARATELY NEGOTIATED AND EXECUTED MASTER AGREEMENT BETWEEN SMAPPEE AND CUSTOMER WITH RESPECT TO PROCUREMENT OF THE PLATFORM SERVICES, SUCH AGREEMENT SHALL PREVAIL AND THIS AGREEMENT WILL NOT APPLY.

## 1. APPLICABILITY

1.1. The use of the Platform, Software and Platform Services rendered by SMAPPEE shall be governed by these Platform Terms. The general terms and conditions of the Customer are not applicable and are explicitly excluded, even if such general terms and conditions of the Customer contain a similar clause.

1.2. Before accessing the Platform and using the Platform Services, the Customer has been informed of these Platform Terms. Unless otherwise explicitly agreed upon in writing, the Customer shall accept these Platform Terms upon commissioning of the (hardware) Product (or the KYC screening in case of the Pay Station being licensed) or upon activation the License key, whichever occurs earlier.

1.3. The most recent version of these Platform Terms is available on the Website.

## 2. GRANT OF LICENSE

2.1. **License.** Unless terminated in accordance with these Terms, the License on the Software and Platform Services is not perpetual but is recurring, i.e. a subscription-based license. The Software will only be used in object-code. Subject to compliance with these Platform Terms and subject to payment of the relevant Fees, Smappee hereby grants the Customer a renewable, non-exclusive, non-transferable, non-sublicensable, revocable, limited license to access the Platform and use the Software and the Platform Services for the purpose for which it is provided. If certain (hardware) Products are not sold but licensed (such as the Smappee Pay Station), the License granted herein equally applies to the use of such product or device.

2.2. **Additional features or additional Platform Services.** In the event Customer purchases additional modules, features or add-ons to the Platform Services (including, without limitation features or functions that SMAPPEE charges other customers for) such features will, subject to payment of the relevant Fees, be deemed part of the Platform and are therefore licensed subject to these Platform Terms (unless SMAPPEE provides them pursuant to different terms and conditions).

2.3. **Open-Source.** If any part of the Software is subject to any open-source license terms, as indicated by separate open-source license terms provided with the Software, the use and the license of that part of the Software will be subject to those open-source license terms. In the event of any contradiction or uncertainty between the license terms contained herein and the open-source license terms with respect to the portions of the Software governed by open-source license terms, the applicable open-source license terms will prevail.

## 3. FEES

3.1. **Initial purchase.** To the extent the (hardware) Product (including the Software) is procured by Customer via a reseller of (certified) installer of SMAPPEE, Customer pays such reseller or installer the Fee for the initial purchase of the Product.

The initial purchase of the (hardware) Product includes the License for the Software and access to the Platform Services during the Initial Subscription Term. As such, the Fees for such an initial purchase of the Product, including the License, shall not be payable by the Customer directly to SMAPPEE but consist of a direct sale between Smappee's reseller or installer and the Customer.

3.2. **Renewals.** The Customer acknowledges that renewals of the License on the Software or Platform Services or Pay Station (if applicable) beyond the expiry of Initial Subscription Term, shall be subject to payment of the relevant Fees (“Renewal Fees”) by the Customer directly to SMAPPEE.

For the avoidance of doubt, as stated in Article 5.3 of these Terms, payment of the Renewal Fees is required in order to guarantee the continued use of the Software and Platform Services beyond the Initial Subscription Term: if the License is not renewed by the Customer (or terminated prior to the expiry of the Initial Subscription Term), continued use of the (hardware) Product shall be limited to the basic functionalities of the (hardware) Product, excluding the features and Platform Services included in the License.

3.3. **Additional features.** If applicable and offered by Smappee, the Customer can choose to activate additional paid features in its account subject to payment of the applicable Fees. Paid features are listed in the Order, the Documentation and Customer’s account in the Smappee Dashboard.

3.4. All Fees payable pursuant to these Terms and a specific Order are non-refundable and upfront payable for the Initial Subscription Term or any Renewal Term thereafter.

#### 4. USE RESTRICTIONS

4.1. **Restrictions.** Except as expressly and unambiguously permitted by this Agreement, Customer shall not, nor permit anyone else to, directly or indirectly: (i) copy, modify, resell or distribute the Software or Platform; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Platform (except the foregoing will not apply to the extent prohibited by applicable local law); (iii) rent, lease, or use the Software or Platform for timesharing or service bureau purposes, or otherwise use the Platform on behalf of any third party; (iv) use the Platform to develop any other product or services whether delivered internally or as an external service offering or (v) use the Platform for performing comparisons or other “benchmarking” activities, either alone or in connection with any other Platform (and Customer will not publish or disclose any such performance information or comparisons).

4.2. **Proprietary notices.** Customer shall maintain and not remove or obscure any proprietary notices on or in the Software or Platform. Title, ownership rights, and intellectual property rights, in and to the Software or

Platform, and any copies or portions thereof, shall remain in SMAPPEE or (as applicable) its suppliers/licensors. The Platform is protected by copyright laws. These Terms do not give the Customer any rights not expressly granted herein.

4.3. The Customer understands that SMAPPEE may modify or discontinue offering the Platform of certain features thereof at any time (provided that discontinuance of subscription-based licenses will only take place at the end of the then-current term).

#### 4.4. For Pay Station:

The Customer will not sell, sublicense, transfer, relocate the Pay Station to a different company or location), assign, lease or sub-rent the Pay Station.

The Customer shall ensure that the Pay Station is not damaged, lost or stolen. The Customer shall notify Smappee without undue delay if the Pay Station is damaged, lost or stolen using the following link. In case replacement of a lost or stolen Pay Station is required, Smappee will undertake best efforts to provide the Customer with a similar functional Pay Station. Any costs related to the replacement, transport or installation of such a new Pay Station will be invoiced separately by SMAPPEE.

Smappee may rescind Pay Station Services in case of Customer’s breach of these Terms. In case of termination of the Pay Station Services, the Pay Station must be returned to SMAPPEE in good condition. For detailed information on how to return the Pay Station, please refer to the Website at [insert link where return procedure is described].

#### 5. TERM AND TERMINATION

5.1. **Start of the License.** A License on the Software, and Platform Services granted hereunder is effective from the date of commissioning of the (hardware) Product (if applicable) or the date of activation of the license key of the Software, whichever occurs earlier.

In case a Pay Station is licensed to the Customer as part of the Platform Services, the start of the right to use the Pay Station is effective as of the date of successful KYC screening being performed by SMAPPEE.

5.2. **Initial Subscription Term.** All use of the Software, access to the Platform, use of the Platform Services and use of the Pay Station (if applicable) is subscription-based and not perpetual: unless terminated in accordance with the provisions of these Terms, the License is granted for an Initial Subscription Term of 5

years unless otherwise defined and communicated to the Customer.

5.3. **Renewal.** Unless terminated in accordance with the provisions of this Article 5, the License shall automatically renew for successive one (1) year periods (“Renewal Term”), commencing on the expiry of the Initial Subscription Term. As such, in absence of a notice of termination at least thirty (30) calendar days prior to the expiry of the Initial Subscription Term (or then current Renewal Term), the License shall automatically be renewed, subject to a Renewal Fee being invoiced by Smappee to the Customer. Payment of such Renewal License Fee shall occur through in-app payments.

5.4. **Termination by Smappee.** Without prejudice to any other remedy available to SMAPPEE (including but not limited to remedies, suspension and termination rights set forth in Smappee’s General Terms and Conditions of Sale), SMAPPEE may, subject to providing the Customer with a notice, suspend the License and prevent further access to the Platform or further use of the Software and/or Services if (i) the Customer fails to make a payment of the Fees when due, or, (ii) if the Customer fails to cure a breach of any of its obligations hereunder within thirty (30) days from receipt of a written notice from SMAPPEE stating such breach, or, (iii) if the Customer becomes the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or terminates its business activities.

#### 5.4. **Consequences of early termination or non-renewal.**

5.4.1 Termination before the Initial Subscription Term of the License does not entitle the Customer to a refund of the License Fees (covering the Initial Subscription Term) paid. Further, upon such early termination of the License, the relevant Platform Services or features in scope of the License shall terminate.

5.4.2. Upon the termination of the License, the Customer’s right to use the Software and the Platform Services and Pay Station (if applicable) will automatically expire and access to the Platform will be disabled.

5.4.3. In case of (early) termination of the License or non-renewal of the License, the Customer can continue use of the (hardware) Products, but such continued use of the Product (i.e. use of the Product after early termination or non-renewal of the License covering the Initial Subscription Term) shall be limited to the basic functionalities of the Product, excluding the features and Platform Services included in the License.

## 6. SUPPORT AND UPGRADES

6.1. The Customer acknowledges that the Platform contains features that allow SMAPPEE to remotely and automatically identify, track and analyze certain aspects of use and performance of Platform.

#### 6.2. **Updates and upgrades.**

SMAPPEE reserves the right to make, in its sole discretion, from time to time, without prior notification to the Customer, standard (i.e. to all SMAPPEE customers accessible) changes and updates to the functionality and/or documentation of the Platform Services, provided they do not nullify or otherwise disregard the features and conditions of the Agreement. Such updates are included in the License Fee (and Renewal License Fee).

Upgrades to the Software should be purchased separately by the Customer (via in-app purchases).

6.3. **Feedback.** With respect to any Customer proposed modifications, derivatives, enhancements or improvements to the Platform Services (“Feedback”), Customer hereby grants SMAPPEE a perpetual, irrevocable, royalty-free, fully paid-up, sub-licensable, right and license to use, display, reproduce, distribute and otherwise fully exploit such Feedback for any purposes. All Feedback is provided by Customer “AS IS.”

## 7. OWNERSHIP AND COPYRIGHT

SMAPPEE and its suppliers retain all intellectual property rights, title and interests in and to the Software and Platform Services. All rights in and to the Software and Platform Service not expressly granted to Customer are reserved to SMAPPEE. No license is granted to the Customer other than to use the Platform Services expressly stated in the Agreement. The SMAPPEE name and logo, and the product names associated with the Platform are trademarks of SMAPPEE or third parties and may not be used without SMAPPEE’s prior written consent. The Customer will not remove any proprietary notice or other legend from the Software.

## 8. WARRANTIES AND LIMITATION OF LIABILITY

SMAPPEE warrants that (i) it has the power, and has obtained all permits, regulatory licenses, registrations and authorizations required to provide the Platform Services procured under these Terms; and (ii) the Platform Services shall be provided with all professional diligence, skill and care and corresponding to good industry practises.

The standard warranty offered by Smappee on hardware Products extends to twenty-four (24) months. The warranty starts as of activation of the license key of the Software incorporated in the Product.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8, SMAPPEE AND ITS SUPPLIERS PROVIDE THE PLATFORM “AS IS” AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT.

CERTAIN ASPECTS OF THE PLATFORM MAY INVOLVE ARTIFICIAL INTELLIGENCE. CUSTOMER ACKNOWLEDGES THAT ARTIFICIAL INTELLIGENCE SYSTEMS ARE A RAPIDLY EVOLVING FIELD. WHILE SMAPPEE IS ALWAYS WORKING TO IMPROVE THE SOFTWARE, DUE TO THE PROBABILISTIC NATURE OF MACHINE LEARNING, THE PLATFORM MAY PROVIDE INACCURATE OUTPUT OR OTHERWISE NOT ALWAYS PRODUCE THE INTENDED RESULTS. AS SUCH, CUSTOMER ACKNOWLEDGES THAT NO WARRANTIES ARE MADE BY SMAPPEE WITH RESPECT TO (AND SMAPPEE WILL HAVE NO LIABILITY WITH RESPECT TO) THE OUTPUT (OR CUSTOMER’S USE THEREOF) OF GENERATIVE AI FUNCTIONS OF THE PLATFORM.

Third-party services, whether offered through the Platform or not, are provided by third parties and SMAPPEE is therefore not liable for these third-party services, which may be subject to specific terms of use, End User License Agreements (EULAs), and/or privacy statements to be concluded directly by the Customer with this third-party. SMAPPEE gives no warranty on third-party services.

THE WARRANTIES AND SMAPPEE’S LIABILITY DESCRIBED IN THIS AGREEMENT ARE SMAPPEE’S EXCLUSIVE OBLIGATIONS AND THE CUSTOMER’S EXCLUSIVE REMEDIES. THEY ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO OTHER WARRANTIES, REMEDIES, OBLIGATIONS, LIABILITIES, RIGHTS, OR CLAIMS, WHETHER ARISING IN TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE ARE MADE OR GIVEN BY SMAPPEE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY THE SOFTWARE IS ERROR OR BUG FREE. NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY, IS MADE EXCEPT AS SET FORTH IN THIS AGREEMENT. SMAPPEE EXPRESSLY DISCLAIMS (AND CUSTOMER ACKNOWLEDGES

THAT IT DISCLAIMS) ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SMAPPEE , REGARDLESS OF LEGAL THEORY, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, OR ANY OTHER ECONOMICAL ADVANTAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE PROCURED UNDER THIS AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SMAPPEE ’S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SOFTWARE OR SERVICE PROCURED UNDER THIS AGREEMENT, REGARDLESS OF LEGAL THEORY AND FOR ALL CLAIMS IN AGGREGATE, EXCEED THE AMOUNT OF THE LICENSE FEES PAID FOR THE SOFTWARE BY THE CUSTOMER UNDER THE AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

## 9. CONFIDENTIALITY AND PROTECTION OF DATA

9.1 All information regarding the Software and Platform Services, or otherwise disclosed by SMAPPEE that is identified as confidential, or that Customer should reasonably understand to be confidential, is SMAPPEE’s “Confidential Information”. Customer will hold all Confidential Information in confidence and not disclose it to any third party, unless otherwise specifically approved by SMAPPEE in writing. Customer will only use the Confidential Information for the purposes of its relationship with SMAPPEE hereunder, including as necessary to use the Platform for the purposes for which it is provided. This Section will not apply to information that is or becomes generally available to the public without the fault of Customer. On SMAPPEE’s request at any time, Customer will promptly return to SMAPPEE (or, at SMAPPEE’s request, destroy) all Confidential Information. If requested by SMAPPEE, Customer will provide SMAPPEE with written certification that it has complied with this Section.

9.2. To the extent that the Customer’s Personal Data (as defined in the [Regulation \(EU\) 2016/679](#) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) is

processed by SMAPPEE when deploying the Platform Services, such processing will be done in accordance with SMAPPEE's Privacy Policy which is an integral part of the Agreement. SMAPPEE's Privacy Policy is available on the Website. Upon activation of the License, the Customer declares to have read and agree to the terms of the SMAPPEE Privacy Policy.

9.3. SMAPPEE will maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality, and integrity of the Customer's (personal) data as described in the documentation. Those safeguards will include measures designed to prevent unauthorized access to or disclosure of the Customer's (personal) data.

## 10. APPLICABLE LAW AND JURISDICTION

These Platform Terms and any dispute or claim arising out of or in connection therewith shall be governed by and construed in accordance with the laws of Belgium. All disputes arising out of or in connection with these Platform Terms shall be settled by the Court of Kortrijk.

## 11. MISCELLANEOUS

11.1. SMAPPEE reserves the right to amend its Platform Terms in case of a justified cause and upon notice to the Customer (via email, on the Website or the SMAPPEE Platform).

11.2. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision(s) shall be construed to reflect, as nearly as possible, the intent of the invalid or unenforceable provision(s), while all other provisions shall remain in full force and effect.

11.3 No joint venture, partnership, employment, or agency relationship exists between the Customer and SMAPPEE based on the Order or use of the Service.

11.4 A Party's failure to enforce any right or provision in the Order shall not constitute a waiver of that right or provision unless acknowledged by that Party in a written agreement.

11.5. In the event that performance of the Order by either Party is prevented, hindered, delayed or otherwise impracticable due to flood, riot, fire, judicial or governmental action, labor disputes, natural disasters, epidemics/pandemics (and judicial or governmental action related thereto) or other causes beyond the control of the Party, such Party shall be excused to the extent

that performance is prevented, hindered or delayed by such causes.

11.6. The Order may not be assigned by Customer without SMAPPEE's prior written consent but may be assigned by SMAPPEE to (i) a parent or subsidiary company; (ii) an acquirer of all or substantially all of SMAPPEE's assets involved in the operations relevant to these Terms, or (iii) a successor by merger. Any purported transfer made in violation of this section shall be null and void.

11.7. The Agreement, together with any applicable attachment(s), constitutes the entire agreement between the Customer and SMAPPEE and supersedes all prior or contemporaneous, written or oral, negotiations, discussions or agreements between the Parties with respect to the subject matter of the Order. An amendment or modification to the Order is only binding if it is in writing and signed by the authorized representatives of the Parties.

## DEFINITIONS

"Affiliate" means a company controlled by, controlling or under common control with a party to these Terms.

"Agreement" means these Platform Terms, together with the SMAPPEE Offer, additional Orders and all documents to which reference is made in these Terms of Use. "Fees" are the prices payable for the Products, Software and/or Platform Services. The Fees may consist of fees for the (hardware) Product, the Software ("License Fee") or fees due for the Platform Services.

"Initial Subscription Term" means the term, starting upon activation of the License, during which Customer can use the Software and Platform Services in accordance with these Terms. The Initial Subscription Term is 5 years, unless otherwise agreed upon and explicitly defined in the Order.

"License" is the renewable, non-exclusive, non-transferable, revocable, limited license to use the Software, the Platform Services, the Pay Station (if applicable) or specific features, subject to compliance with these Platform Terms and payment of the relevant License Fees.

"Order" means a quote, order confirmation and any other document(s) in writing or electronic format, which sets forth the Products, the licensed Software and Platform Services provided to the Customer, under these Terms.

“Smappee” means Smappee NV, having its registered office at Evolis 104, 8530 Harelbeke, Belgium, or one of its affiliates that fulfilled the Customer’s Order.

“Software” means the Smappee software and related manuals and documentation, embedded in the Product and licensed in accordance with these Platform Terms, for the purpose of enabling the Platform Services.

“Pay Station” means the hardware device enabling Pay Station Services in relation to the Products. The Pay Station can be deployed for the processing of payment transactions in relation to EV charging.

“Platform Services” are the services defined in the relevant Order provided by Smappee, enabled through the Software. Platform Services include access to and use of the Smappee Dashboard including all data provided therein, in line with the access granted to the Customers as well as the use of the Smappee mobile App including all data provided therein. Pay Station Services are included in the scope of Platform Services.

“Product” is the hardware product deployed by the Customer. The Software is embedded within the Product.

“Website” means Smappee’s website [www.smappee.com](http://www.smappee.com)