

"SMAPPEN"
STANDARD LICENSE AGREEMENT
AND TERMS OF USE

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STANDARD LICENSE AGREEMENT AND TERMS OF USE "SMAPPEN"

BETWEEN

SMAPPEN, a simplified joint stock company registered in the Toulouse Companies Register with number 843 086 562, with its offices located 30 rue des teinturiers, 31300 - Toulouse, hereinafter referred to as "SMAPPEN";

AND

The natural or legal person subscribing to SMAPPEN services through Registration as defined in Article 1.7 below, hereinafter referred to as the "**Licensee**".

SMAPPEN and the Licensee are hereinafter referred to individually as "**Party**" and collectively as "**Parties**".

PREAMBLE

- i. SMAPPEN is a company that researches, develops, and markets innovative services in the field of geodata. These services are provided for a fee and partially free of charge. SMAPPEN operates a geomarketing platform integrating said services and bearing its name, *Smappen*.
- ii. As a result of its research and development work, SMAPPEN owns the rights to a proprietary technology in the field of geodata. This technology is implemented by its geomarketing platform. Today, SMAPPEN wishes to license said technology and the related rights.
- iii. The Parties have agreed to define the terms and conditions of the license, and the conditions of use of the *Smappen* software.

THE PARTIES HAVE AGREED AS FOLLOWS

1. DEFINITIONS

In this License, terms used with their first letter in uppercase, whether singular or plural, shall have the respective meanings set forth in this Section 1.

1.1. License

"**License**" means this standard license agreement and terms of use, its appendices, and any updated version thereof pursuant to Section 6.2 below.

1.2. Licensee Database

"**Licensee Database**" means the electronic database for which the Licensee is the content producer.

1.3. Documentation

"**Documentation**" means any documentation provided by SMAPPEN, in electronic format, relating to the use of the SaaS Service.

1.4. Personal Data

"**Personal Data**" means any information that directly or indirectly identifies a natural person.

1.5. Licensee Data

"**Licensee Data**" means the content of the Licensee Database intended to be processed by the Software via the SaaS Service.

1.6. Software

"**Software**" means all the modules and functionalities of SMAPPEN's proprietary software, resulting from its R&D work, which enable SMAPPEN to provide the SaaS Service. The Software is exclusively accessible remotely, through the Users' connection to the Platform.

1.7. Registration

"**Registration**" means access to the SaaS (*Software as a Service*) Service following an offer issued by SMAPPEN to the Licensee. SMAPPEN offers four types of Registrations:

- "**Free Registration**" refers to access to free features following online registration from the website.
- "**Standard Commercial Registration**" refers to access to features covered by a commercial offer, including terms such as fees, defined during online registration directly from the website.
- "**Custom Commercial Registration**" refers to access to features covered by a commercial offer with conditions, including fees, negotiated by the Parties.
- "**Public Contract**" refers to the commercial offer relating to the SaaS Service issued by SMAPPEN in the framework of a public contract issued by the Licensee.

1.8. Platform

"**Platform**" means the web platform through which the Licensee may use the Software and all the services provided by SMAPPEN.

1.9. Data Controller

"**Data Controller**" means the legal or natural person who determines the purposes and means of a processing operation. In practice it is the legal person embodied by its legal representative.

1.10. SaaS Service

"**SaaS Service**" means all the services provided by SMAPPEN in SaaS mode within the framework of the present Contract and in particular:

- The grant of a license to use the Software;
- The right to access the Platform as a means of access to the Software;
- The hosting and backup of the Licensee Database on the Platform.

1.11. Signature

"**Signature**" or "**To Sign**" means:

- The act of affixing one's signature to the document formalizing the Registration; or
- During online Registration, the act of checking the box mentioning the License and referring to it via a hyperlink text. In the latter case, proof of this agreement is stored by SMAPPEN and a Registration confirmation is sent to the Licensee.

1.12. GDPR Subcontractor

"**GDPR Subcontractor**" means any company, person or other organization that processes personal data on the instructions of and on behalf of the Processor.

1.13. Processing of Personal Data

"**Processing of Personal Data**" means any operation or set of operations, whether carried out using automated processes, applied to personal data or sets of personal data, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, limitation, erasure, or destruction.

1.14. User

"**User**" means any natural person authorized by the Licensee to use the SaaS Service pursuant to this Agreement within the contractual limits.

2. PURPOSE

The purpose of this Contract is to define and describe the terms and conditions according to which SMAPPEN makes the SaaS Service available to the Licensee.

3. OPPOSABILITY

The License details all the provisions relating to the SaaS Service ordered by the Licensee from SMAPPEN.

The License is systematically sent and/or made available to the Licensee to enable him to place an order. The Licensee, by Signing the Registration form, acknowledges having received, read, and accepted it, without restriction or reservation, prior to any order or use.

4. DURATION

4.1. Effective Date

The License takes effect upon Signature of the Registration form by the Licensee.

4.2. Duration

The License is concluded for the initial period provided for in the Registration form. By exception, in the case of Free Registration, the License is concluded for an indefinite duration and may be terminated at any time by requesting the deletion of the Licensee's account from SMAPPEN.

4.3. Renewal

At the end of the initial term, except for Public Contracts or Free Registration, the Agreement will be tacitly renewed for identical terms, unless terminated by the Licensee before the renewal date. Notification of License termination shall be made:

- Through the Platform in case of subscription to a Standard Commercial Registration;
- By e-mail to support@smappen.com in case of subscription to a Customized Commercial Registration.

The Parties may mutually agree on an early termination at any time.

5. ACCESS TO THE SAAS SERVICE

5.1. Requirements for access to the SaaS Services

Prior to any access to the SaaS Service, the Licensee shall ensure that it meets the necessary conditions defined below. The Licensee shall be solely responsible if these conditions are not met.

Users must have broadband internet access and a modern, up-to-date browser (*e.g.*, Google Chrome, Mozilla Firefox). It is understood that it is up to the Licensee to subscribe to the necessary telecommunication subscriptions to be able to access the Platform as well as all the services offered by SMAPPEN.

5.2. Accessibility of SaaS Services

The Licensee has a permanent access to the SaaS Service through the Internet network, twenty-four (24) hours a day, seven (7) days a week.

However, access to the SaaS Service may be suspended at any time and without prior notice, including in case of malicious acts, hacking, breakdowns, failures or paralysis of the network, system and/or means of communication, as well as maintenance and correction work required to update and ensure the proper functioning of the SaaS Service.

The Licensee shall be informed, where possible, of the existence and duration of the suspension. Reasonable precautions considering the current state of the art shall be taken to ensure the protection of the SaaS Service and the Licensee Database.

5.3. Management of User IDs

5.3.1. User ID security

Login credentials to the Platform for the Licensee's Users are personal and confidential. The Licensee undertakes to take all necessary measures to keep Users' login details secret and not to disclose them in any form whatsoever. The Licensee is solely responsible for the use of the identifiers. In general, the Licensee shall be responsible for the physical and logical security of the terminals used to access the Platform. If the Licensee becomes aware of an access to the Software by an unauthorized person, the Licensee undertakes to inform SMAPPEN without delay.

5.3.2. Change of User

The access rights right of use of a named User cannot be shared, nor used by more than one User, but can be periodically reassigned to new Users who replace the previous Users no longer using the Service.

This is not the case for API keys that allow programmatic access to the Platform, which may be shared between the Licensee's Users.

5.3.3. Loss - theft - usurpation

In case of loss, theft or usurpation of a User's identifiers, the Licensee will contact SMAPPEN by email to recover his identifiers or to create new ones. It is specified that SMAPPEN does not have the means to ensure the identity of the Users accessing the SaaS Service. In this respect, the Licensee guarantees SMAPPEN against any claim and SMAPPEN shall not be liable for the actions of the Licensee nor its Users.

5.4. Limits of use of the SaaS Service

5.4.1. General restrictions

The Licensee acknowledges and accepts that restrictions may be placed on the SaaS Service, particularly due to an excessive number of connections. The Licensee undertakes not to hinder or disrupt access to and/or use of the SaaS Service, in any way whatsoever, by improper use (*e.g.*, scraping). The Licensee is warned that non-compliant or abusive use of the SaaS Service may render the shared infrastructure incompatible and expose the Licensee to restrictions without prior notice to guarantee an acceptable quality of service to all SMAPPEN Users.

5.4.2. Specific restrictions

The Licensee undertakes to use the SaaS Service only for its intended purpose. In particular, the Licensee shall not:

- Make available, in any way whatsoever, the SaaS Service, the Software and/or the results produced without the written consent of SMAPPEN;
- Interfere with or disrupt the integrity or operation of the SaaS Service;
- Attempt to gain unauthorized access to the SaaS Service or its related systems and networks.

5.4.3. Uploading data

Users are strictly prohibited from uploading or storing on the Platform:

- Illegal data;
- Data containing viruses or other harmful machine code, files, scripts, agents, or program.

The Licensee undertakes to ensure compliance with these provisions by the Users and is responsible for any failure, whether intentional or not.

6. TERMS AND CONDITIONS FOR THE PROVISION OF THE SAAS SERVICE

6.1. Hosting of the Software and the Licensed Database

The hosting of the Software is subcontracted to the following companies on behalf of SMAPPEN:

- Google Cloud (<https://cloud.google.com/>)

- OVH (<https://www.ovhcloud.com/>)
- Scaleway (<https://www.scaleway.com/>)

The Software is provided only in SaaS mode.

The data that the Users transfer and process through the Software must be in direct relation with the SaaS Services. Licensee acknowledges that any other data may be deleted without notice. The hosting of Licensee Data on the Software is carried out in compliance with the technical constraints and limits provided by the said subcontractors.

In the event of termination of this License, the Licensee may obtain the return of the Licensed Data free of charge upon request by registered letter with acknowledgement of receipt. If the Licensee does not request the return of the Licensee Data within two (2) months from the date of termination of the License and/or deactivation of its account, the Licensee's Data may be destroyed.

SMAPPEN's obligations to back up the Licensee's Data are limited to the commitment to make at least one back-up every twenty-four (24) hours with a conservation of the back-up over a period of seven (7) days.

In all cases, the Licensee is solely responsible for the data it transfers and processes, directly or through the Users, who are responsible for taking all useful precautions in this regard, and for the results produced from such data.

6.2. Maintenance and updates

As this is a SaaS Service, the Licensee and its Users shall automatically benefit from corrective maintenance and any updates or upgrades to the SaaS Service.

In addition, to maintain an optimal level of service, the Licensee and its Users may be asked at any time to update their browsers in order to comply with changes in technical requirements. Failing this, the Licensee and its Users will be solely responsible for any interruptions and/or degradation of the SaaS Service that may result.

SMAPPEN reserves the right to modify all or part of the appearance of the Service and its access mode. Likewise, the Licensee accepts that said maintenance and updates may give rise to a temporary suspension of the SaaS Service. This suspension of the SaaS Service may not give rise to any compensation.

SMAPPEN may decide to subject the use of new functionalities to an additional subscription.

SMAPPEN may also decide to delete functionalities of the Commercial Offer. If necessary, the Licensee will be free to terminate the License.

7. SUPPORT

SMAPPEN puts various means of information at the disposal of the Licensee through the Documentation. In this regard, the Licensee undertakes to consult these means of information prior to any request for the support service.

Furthermore, SMAPPEN offers the Licensee a support service reserved for Users.

The Licensee will notify SMAPPEN of the detected anomaly at the email address dedicated to the Licensee's support (support@smappen.com), specifying the detailed description of the encountered problem and the reproduction procedure. As of this notification, SMAPPEN will then initiate a reproduction and analysis procedure that may lead to requests for additional information from the Licensee.

For all the services which would be not covered by the support, the intervention of SMAPPEN can be subject to an additional invoice.

8. INTELLECTUAL PROPERTY

8.1. Extent of the License

The access and the use of the SaaS Service are reserved to the Licensee and to its Users. The license to use the Software granted to the Licensee is temporary, non-exclusive, personal, non-assignable and non-transferable.

This right is granted to the Licensee for the use of the SaaS Service exclusively for the duration of the License, for the agreed number of authorized Users as defined during the Registration.

All the elements related to the Software are and remain the exclusive property of SMAPPEN. The Licensee and/or its Users do not acquire any other right on the Software than those which are expressly granted under the terms of the License. The rights of use granted to the Licensee are strictly limited to the access, to the display, to the printing, to the reproduction on all supports and to the use of the results of the Software, for its own use. Any other use by the Licensee is forbidden without express authorization.

The Licensee is prohibited from commercially exploiting and/or distributing in any way whatsoever the SaaS Services, the pages of the Platform website, or the computer codes of the elements comprising the Platform and/or the Software.

8.2. Protection of the Intellectual Property of SMAPPEN

It is formally forbidden to the Licensee to analyze, to visualize or to modify the configuration of the Platform, as well as its structure and the files constituting it, or to try performing such operations.

Any extraction and/or reproduction of a substantial part of the data and/or information published on the Platform is strictly prohibited. The Licensee may extract its own data in the formats offered. However, the extraction and reproduction of texts from the Platform on paper is authorized for the exclusive internal and personal use of the Licensee and/or its Users, provided that the source is clearly and precisely mentioned.

The Licensee is prohibited from using the specifications of the SaaS Service to create or allow the creation of an application with the same purpose.

Unless agreed upon in writing by SMAPPEN, it is forbidden to the Licensee and to its Users:

- To sell, resell, rent, license, sub-license, lend, assign, pledge, reproduce, modify, adapt or transfer in any way whatsoever all or part of its rights to use the Software and the SaaS Service, and the Documentation;
- To distribute or exploit for commercial purposes, or otherwise make available to a third party the Software and/or the SaaS Service in any way;
- To reproduce all or part of the Software and/or the SaaS Service or the Documentation;
- To exceed the number of Users of the SaaS Service;
- To disassemble, decompile or translate the Software into a form understandable by humans, insofar as the information necessary for the interoperability of the Software with independently created software is made available to them by SMAPPEN and provided that, by this means, they do not harm the legitimate interests of SMAPPEN;
- To extract all or part of the Software;
- To use the Software and/or the SaaS Service for purposes other than the Licensee's own internal needs;
- Or to reverse engineer or to access the SaaS Service to create a competing product or service, create a product using ideas, features, functions, or graphics identical to the SaaS Service, or copy the ideas, features, functions, or graphics of the SaaS Service.

9. CONFIDENTIALITY

The following shall be considered confidential: (i) information relating to the Registration and the stipulations contained therein, (ii) the Licensee's Data processed by the SaaS Service, as well as (iii) in general and without this list being exhaustive, information relating to the Parties' business plans and their present and future activities, their personnel, their know-how, whether this information is obtained directly or indirectly from the other Party, its employees or those of its group companies, subcontractors, agents.

Each Party undertakes (i) not to use the confidential information for any purpose whatsoever, except in execution of the rights and obligations arising from this License, (ii) not to disclose the confidential information to anyone, by any means whatsoever, except to those of their employees, subcontractors or agents to whom this information is necessary for the execution of this Agreement, for the entire duration of the contractual relationship and for five (5) years after the effective end of use of the SaaS Service.

For the protection of the other Party's confidential information, each Party undertakes to take the protective measures that it would take to protect its own confidential information, and undertakes (i) to ensure that its employees, subcontractors and agents who may have access to the confidential information have signed, prior to any disclosure to them, a confidentiality agreement whose obligations are equivalent to those set out in this article and (ii) to justify this in writing and without delay at the first request of the other Party.

10. PROTECTION OF PERSONAL DATA

The conditions of collection and processing by SMAPPEN of the personal data of Users of the Licensee are set out specifically in Appendix I "GDPR".

11. SOFTWARE LICENSE FEES

The financial terms of the License are stipulated in the document formalizing the Registration.

The Licensee makes a firm and definitive commitment to the duration of this License and to the payment of the fees at the milestones associated with this duration.

The fees are exclusive of tax and do not include the cost of telecommunications and Internet access enabling access to and use of the SaaS Service, which shall be borne by the Licensee.

When the Agreement is renewed, the fees may be revised at the end of the commitment period specified in the Registration in accordance with the terms and conditions agreed between the Parties. Failure to pay by the due date will result in the payment of interests on arrears equal to the semi-annual key rate of the European Central Bank plus ten (10) percentage points. Moreover, SMAPPEN will have the right to claim a fixed compensation for recovery expenses equal to forty (40) euros by unpaid invoice.

Furthermore, as of the fifth (5th) day of late payment, SMAPPEN shall be entitled to suspend the execution of the License until full payment of the outstanding amount(s), without this suspension being considered as a termination of the present Contract on the part of SMAPPEN and notwithstanding any damages and interest that SMAPPEN may claim because of the non-payment in question and subsequent prejudices.

12. SUSPENSION AND TERMINATION

12.1. Immediate suspension

Access to and use of the SaaS Service may be restricted, limited, or suspended, ipso jure and without formalities, in the event of any breach of the contractual provisions by the Licensee and/or its Users. The reinstatement of the SaaS Service may be subject to the effective implementation of appropriate measures designed to protect against any risk of perpetuation or reiteration of the breaches that led to the suspension.

12.2. Termination without notice

In case of serious or renewed breach of the contractual provisions on the part of the Licensee, the present Contract may be terminated as of right and without formalities by SMAPPEN.

12.3. Termination with notice

In the event of non-payment and non-regularization and after suspension of access to the SaaS Service, SMAPPEN may proceed, without formalities, to terminate the present Contract after a formal notice sent by electronic means and/or registered letter with acknowledgement of receipt which has remained without effect for eight (8) days.

In the event of a breach of contractual provisions other than those referred to above on the part of the Licensee or SMAPPEN, a formal notice shall be sent by electronic means, for regularization by the other Party. In the absence of regularization within fifteen (15) days, the present contract may be terminated by registered letter with acknowledgement of receipt after giving an additional fifteen (15) days' notice.

12.4. Consequences of termination

Upon termination of this License, access to the SaaS Service by the Licensee and its Users will be terminated, without right to any compensation.

The termination of the License for any reason whatsoever does not exempt the Licensee from its obligation to pay the entirety of the fees due until the expiration of the present Contract, without prejudice to any damages that may be claimed by SMAPPEN.

In the event of termination of this Agreement for any reason other than the Licensee's breach, SMAPPEN may make available to the Licensee a file containing the Licensee Data at the time of termination. SMAPPEN reserves the right to retain, remove and/or dispose of the Licensee Data for legal reasons without prior notice in the event of a breach of the License, including, without limitation, default by Licensee. In the event of termination for default, the right to access the Licensee Data shall immediately cease, and SMAPPEN shall not be obligated to retain any Licensee Data.

13. FORCE MAJEURE

Neither Party may be held liable for the non-performance of any of its contractual obligations due to the occurrence of a case of force majeure as defined by Article 1218 of the French Civil Code.

The Party affected by this impediment, subject to sending the other Party a registered letter with acknowledgement of receipt within five (5) days of its occurrence, will be exempted from the performance of its obligations within the limit of this impediment. The other Party shall then, in the same manner, be exempted from the performance of its own obligations, always within the limit of the impediment. The performance of the obligations of the Parties shall then be suspended for a period at least equal to that of the impediment.

If the impediment lasts for more than thirty (30) calendar days from the date of receipt of the notification of the occurrence of the force majeure event, it shall be deemed to be definitive, and each Party may choose to terminate by operation of law and without judicial formality all or part of this Contract affected by the force majeure.

14. ASSIGNMENT AND SUBCONTRACTING

Under no circumstances may the licensee assign, transfer, delegate, or license all or part of the rights and obligations arising from this Contract, in any form whatsoever, to any third party without SMAPPEN's prior authorization.

This Contract may be transferred at any time by SMAPPEN to any third party of its choice. The Licensee will be informed of any such transfer. In addition, the Licensee is hereby informed that all or part of the services referred to in this Contract may be subcontracted.

15. SUBCONTRACTOR

As part of the SaaS Service, SMAPPEN subcontracts part of the service to subcontractors, which the Licensee acknowledges and accepts.

Public transit isochrones are powered by TravelTime.

16. RESPONSIBILITY OF SMAPPEN

16.1. Limits of responsibility

The responsibility of SMAPPEN could not be committed for in particular:

- The temporary malfunctioning, whatever the cause, of the solution making it totally or partially inoperative;
- The non-observance or the bad execution by the Licensee of any of the contractual provisions;
- The difficulties or time of access to the Platform due to the total or partial non-fulfilment of an obligation, a failure and/or saturation at certain periods of the SMAPPEN servers, telecommunication network operators and/or Internet access providers;
- The content of the Licensed Data;
- Errors in handling and/or interpretation;
- Virus contamination of the Licensee Data and/or the Licensee's and/or Users' software, the protection of which is the responsibility of the latter;
- Possible misappropriation of identifiers and, more generally, of any information of a sensitive nature for the Licensee and/or its Users;
- The adequacy of the Service to the specific needs of the Licensee and/or its Users;
- The use of the results produced by the SaaS Service from the Licensee's Data;
- The possible loss and/or destruction of Licensee Data and/or information, despite the reasonable security measures put in place by SMAPPEN.

SMAPPEN may only be held liable for immediate, direct, and foreseeable damage caused by a partial or total failure to perform the Agreement on the part of SMAPPEN as proven by the Licensee. Compensation for indirect damages is excluded. Consequently, SMAPPEN shall in no way be liable for any indirect or unforeseeable loss or damage suffered by the Licensee or third parties, including in particular any lost profit, loss, inaccuracy or corruption of files or data, commercial loss, loss of turnover or profit, loss of clientele, loss of opportunity, cost of obtaining a substitute product, service or technology, in relation to or arising from the non-performance or faulty performance of the services in part or in full.

16.2. Maximum liability

If SMAPPEN's liability is incurred, the amount of damages that SMAPPEN may be ordered to pay is expressly limited to the cumulative amount of the price (excluding VAT) of the service, effectively paid by the Licensee, during the last twelve (12) months of effective use of the SaaS Service.

16.3. Insurance

SMAPPEN declares that it holds, with a solvent insurance company, an insurance covering the consequences of its operational and professional civil liability that may be incumbent upon it due to the execution of the present License.

17. RESPONSIBILITY OF THE LICENSEE

The Licensee undertakes to collaborate actively with SMAPPEN in the execution of the License. Thus, the Licensee undertakes to communicate to SMAPPEN all documents, information, and data necessary or requested by SMAPPEN to enable the latter to ensure the supply of the products and services ordered by the Licensee under the conditions provided for in the License.

In its capacity as Data Processor with respect to the Personal Data in its possession, the Licensee undertakes to comply with all its applicable obligations under the data protection regulation, "GDPR" EU n°2016/679 of April 27, 2016, and ensures that the persons concerned by said Personal Data are informed of the Processing of their Personal Data carried out through the use of the Platform.

The Licensee is solely responsible for its use of the Platform and for the antivirus security of files uploaded via the Platform.

The Licensee is responsible for compliance with the conditions and limits of use of the SaaS Service, in accordance with its Documentation and the obligations of this Agreement, by itself and by its Users.

The Licensee guarantees SMAPPEN against any damage, of any nature whatsoever, any claim or legal action from third parties relating to its use of the SaaS Service or that of the Users. In this respect, the Licensee undertakes to compensate SMAPPEN for any condemnation of any nature, as well as for compensation, damages and legal fees and court costs.

18. MISCELLANEOUS PROVISIONS

18.1. Non-transferability

18.1.1. Principle of non-transferability

This Agreement may be transferred at any time by SMAPPEN to any third party of its choice. The Licensee will be informed of this transfer. Furthermore, the Licensee is informed that all or part of the services referred to in this Agreement may be subcontracted.

The Licensee may not, under any circumstances, assign, transfer, delegate, or license all or part of the rights and obligations arising from this Agreement, in any form whatsoever, to any third party without the prior authorization of SMAPPEN.

18.1.2. Conditions of transferability

Notwithstanding the *intuitu personae* nature of the present contract, the Licensee shall remain free to negotiate the absorption, acquisition, merger, takeover, universal transmission of assets, or comparable operation aimed at the takeover of the Licensee's assets for the benefit of or with a company other than a purely financial group, provided that it obtains SMAPPEN's prior agreement.

If SMAPPEN does not object within forty-five (45) days of receipt of the notification by the Licensee, the continuation of the Agreement within the framework of the proposed transaction shall be deemed to have been approved.

18.1.3. Effect of an authorized assignment

Being understood that the License binds the Parties, their successors, and assignees, it is hereby agreed that any company to which the Licensee's rights and obligations are assigned shall be subject to the same obligations as those imposed on the Licensee under this Agreement, unless the new parties jointly agree otherwise.

In any case, an amendment to the document formalizing the Registration between SMAPPEN and said company shall be drawn up pursuant to the operation carried out with the Licensee, which shall stipulate the change of licensee and confirm the respective obligations of each of the Parties involved in accordance with the preceding paragraphs.

18.2. Nullity - invalidity

If one or more provisions of the License are held to be invalid or declared as such pursuant to a law, a regulation - and in particular European Union law - or following a final decision by a competent court, the other provisions shall retain all their force and scope and the Parties shall proceed without delay to make the necessary amendments, respecting as far as possible the agreement of will existing at the time of signing the Registration.

18.3. Waiver

If, in the event of a breach by either Party of its obligations under the License, the non-breaching Party does not exercise its rights arising from such breach, the non-exercise of such rights shall not be construed as a waiver of such rights in the future or upon a similar breach by the breaching Party of its obligations under this Contract.

18.4. Commercial References

SMAPPEN authorizes the Licensee to use its name and any other distinctive sign belonging to it solely as a commercial reference on all types of media.

19. LANGUAGE - APPLICABLE LAW- JURISDICTION

If the License is made available in more than one language, the French version will be used for its interpretation.

This License is subject to French law.

Any dispute arising between the parties from the interpretation, performance, or termination of this Agreement shall be submitted, in the absence of amicable resolution, to the Tribunal Judiciaire de Toulouse.

Appendix I – GDPR

In accordance with the requirements of EU Regulation No. 2016/679 “GDPR,” SMAPPEN informs the Licensee that the Licensee is the Data Controller for the personal data of the Licensee’s employees, officers, or representatives (last name, first name, landline and mobile phone numbers, postal and email addresses, *Twitter/LinkedIn/etc.* addresses, job title, and professional duties) used in connection with the SaaS Service.

SMAPPEN retains the Personal Data of the Licensee’s employees, officers, or representatives for the duration of the contractual relationship and beyond in the event of legal proceedings.

Each employee, executive, or representative of the Licensee has the right to access, rectify, object on legitimate grounds, restrict, and erase all data concerning them under the conditions provided for by the GDPR.

Requests regarding Personal Data must be sent by email to the following address:

DPO – SMAPPEN
dpo@smappen.com

1. Purpose

The purpose of this Appendix is to define the conditions under which SMAPPEN, in its capacity as a data processor, undertakes to perform on behalf of the Licensee the processing operations of Personal Data described in Sub-Appendix A.

2. Obligations of SMAPPEN acting as a data processor

2.1. General Provisions

SMAPPEN acts as a “processor” (Art. 28 GDPR) for the processing of Licensee Data. Consequently, SMAPPEN undertakes (i) not to process Licensee Data other than under the terms of the contract and (ii) not to carry out any other processing of Licensee Data not provided for in the contract, except upon prior written, documented, and legitimate instruction from the Licensee as described in Sub-Appendix C.

SMAPPEN reminds the Licensee that, pursuant to Article 28(3)(2) of the GDPR, any instruction from the Licensee to SMAPPEN that could result in a breach of the GDPR or French data protection law shall require SMAPPEN to immediately inform the Licensee thereof. SMAPPEN reserves the right to refuse instructions from the Licensee that it deems unlawful within the meaning of Article 82(2) of the GDPR. In such a case, a written and documented refusal by SMAPPEN shall not entitle the Licensee to terminate the contract, except that the Licensee may hold SMAPPEN liable for termination deemed to be “without legitimate cause.”

SMAPPEN undertakes to process Licensee Data technically solely for the purpose of providing the SaaS Service, to the exclusion of any other use, for the benefit of SMAPPEN or third parties.

2.2. Security of Personal Data

SMAPPEN undertakes to implement all necessary technical and organizational measures to protect Licensee Data, in particular against any disclosure, loss, unintended alteration, unauthorized access, *etc.*

SMAPPEN implements appropriate security measures, taking into account the state of the art, implementation costs, and the nature, scope, context, and purposes of the processing, as well as the risks—whose degree of probability and severity varies—to the rights and freedoms of individuals.

However, the Licensee acknowledges and accepts that the internet is an open and unregulated network, consisting of the international interconnection of independent computer networks using the TCP/IP technical protocol, without any obligation regarding service provision or quality of service between the operators of these networks. Consequently, SMAPPEN shall in no way be liable for any breach of the Licensee's Personal Data occurring outside the scope of this Agreement or resulting from the Licensee's failure to comply with the security measures and guidelines implemented by SMAPPEN.

3. Subcontracting

SMAPPEN's obligations under this Agreement may be partially performed by a subcontractor of SMAPPEN (hereinafter "Subcontractor") following prior written notification to the Licensee of the Subcontractor's identity.

To enable the Licensee to form an opinion on the proposed subcontracting, SMAPPEN undertakes to provide the Licensee with all relevant information regarding its proposed further subcontracting, specifying in particular the identity of the prospective Subcontractor, the nature and scope of the subcontracted services, the duration of the subcontracting agreement, and the potential impacts of such further subcontracting on this Agreement.

The Licensee has thirty (30) business days from the date of the prior written notice of subsequent subcontracting provided by SMAPPEN to raise any objections. If necessary, the Licensee and SMAPPEN agree to cooperate in good faith to resolve such objections.

As of the date of execution of this Agreement, the list of SMAPPEN's Subcontractors is set forth in Sub-Appendix B.

The right to partial subcontracting granted to SMAPPEN by this article does not release it from its contractual and regulatory obligations. If the Sub-Subcontractor fails to fulfill its obligations regarding the protection of Personal Data, SMAPPEN shall remain fully liable to the Licensee.

4. Rights of Individuals

It is the Licensee's responsibility to inform Users of the rights they possess and how they may exercise them. Furthermore, it is the Licensee's responsibility to respond to requests from data subjects to exercise their rights. SMAPPEN will assist the Licensee to the greatest extent possible in fulfilling its obligation to respond to requests to exercise rights.

In the event that a data subject submits a request to exercise their rights to SMAPPEN, SMAPPEN will forward this request to the Licensee as soon as possible after receiving the request.

5. Notification of Personal Data Breaches

SMAPPEN undertakes to notify the Licensee by email, as soon as possible after becoming aware of it, of any breach involving the Licensee's Personal Data.

It is the Licensee's responsibility to notify, if necessary, the supervisory authority under whose jurisdiction they fall (Art. 33 GDPR) and the data subjects (Art. 34 GDPR) when such a Personal Data breach is reported to them by SMAPPEN. However, SMAPPEN undertakes, where applicable, to assist the Licensee in this task. This notification shall be accompanied by any useful documentation to enable the Data Controller, if necessary, to notify the competent supervisory authority of this breach.

6. Data Portability and Return of the Licensee's Personal Data

In the event of termination of the License, the Licensee, upon request by registered letter with acknowledgment of receipt, may obtain the return of the Licensed Data at no additional cost. If the Licensee does not request the return of the Licensee Data within two (2) months from the date of termination of the License and/or deactivation of their account, said data will be destroyed.

7. Licensee's Obligations to SMAPPEN

The Licensee is solely responsible for the processing of Personal Data collected and processed via the SaaS Service. In accordance with European and French legislation on the protection of personal data, in particular the EU General Data Protection Regulation (GDPR) No. 2016/679 of April 27, 2016, the Licensee warrants to SMAPPEN that it has sole discretion over (i) the purposes and means of the processing (Art. 4.7 GDPR) it performs on the Personal Data processed via the SaaS Service and (ii) the use it makes of such Personal Data.

Prior to any use of the Software or the SaaS Service by the Licensee and throughout the duration of such use, the Licensee warrants to SMAPPEN that, in its capacity as Data Controller (within the meaning of the GDPR) of the Personal Data:

- (i) The Licensee has collected and processed Personal Data in a lawful, fair, and transparent manner, for specific, explicit, and legitimate purposes that the Licensee alone determines and that SMAPPEN cannot know.
- (ii) The Licensee has previously informed (Art. 12 GDPR) the individuals whose Personal Data it processes of all its obligations toward them (including the determination of the legal basis for its processing and its specific purposes).
- (iii) The Licensee has informed the data subjects that their rights (Articles 15 to 22 of the GDPR: access, rectification, erasure, objection, etc.) must be exercised directly with the Licensee and not with SMAPPEN. SMAPPEN undertakes to comply with any lawful written instructions from the Licensee in this regard.
- (iv) The Licensee has filed all necessary prior notifications with its Supervisory Authority (Article 51 of the GDPR) regarding the processing of Personal Data in the Licensee Database, in particular by SMAPPEN in its capacity as a GDPR processor under the SaaS service.

- (v) The Licensee undertakes to comply with all legal and regulatory obligations incumbent upon it under applicable regulations, including the GDPR.

The warranties provided by the Licensee to SMAPPEN under this Article constitute essential and explicit conditions of the service provided by the Licensee, such that SMAPPEN cannot be held liable in this regard on any grounds whatsoever. In the event of a breach, the Licensee agrees to indemnify and hold SMAPPEN harmless, without limitation or reservation, against any consequences, including financial liabilities, that may thereby be imposed on SMAPPEN.

Sub-Appendix A – Descriptions of Data Processing

1. Purpose

This data processing concerns personal data provided by the Data Controller on the one hand, and generated regarding the data subjects in the context of the performance of the Contract concluded between the Data Controller and the Data Processor on the other, for the purpose of fulfilling the obligations set forth in this contract.

The processing operations concerned are:

- The provision of the SaaS Service
- Hosting of data provided by the Licensee
- Maintenance related to the provision of the Platform.

2. Purposes of the processing

2.1. Details of the processing: Provision of the SaaS Service

The personal data entrusted by the Data Controller will be processed to achieve the following objectives:

- Enabling map visualization on the platform made available to the Licensee
- Spatial analysis of data

2.2. Details of the processing: Hosting of data provided by the Licensee

The personal data entrusted by the Data Controller will be processed to fulfill the purpose of:

- Ensuring the storage of data provided by the Licensee

2.3. Details of the processing: Maintenance related to the provision of the Platform.

The personal data entrusted by the Data Controller will be processed to achieve the following objective:

- Ensuring the continuity of the service provided to the Licensee

3. 3. Data Processed

The Data Controller may provide certain personal data to the Processor, or the Processor may collect such data on behalf of the Data Controller. The scope of data processed by the Processor is generally determined and controlled by the Data Controller at its sole discretion and may include the following types of personal data:

3.1. For the processing: Provision of the SaaS Service

- Data collected via the Platform's free-text fields
- Any file containing personal data uploaded to the Platform

- Contact lists contained in the tools of Users connected to the Platform (e.g., use of the Licensee's CRM integration feature).

3.2. For the purpose of processing: Hosting of data provided by the Licensee

- Data collected via the Platform's free-form text fields
- Any file containing personal data uploaded to the Platform
- Contact lists contained in the tools of Users connected to the Platform (e.g., use of the Licensee's CRM integration feature).

3.3. For processing: Maintenance related to the provision of the Platform.

- Data collected via the Platform's free-form text fields
- Any file containing personal data uploaded to the Platform
- Contact lists contained in the tools of Users connected to the Platform (e.g., use of the Licensee's CRM integration feature).

4. Retention periods

The Processor will retain and process the data provided by the Data Controller for the duration of the Agreement.

In its capacity as a service provider, the Processor may be required to retain certain data concerning the Data Controller's employees and customers and the actions taken by them, in accordance with applicable regulations, including in particular:

- Certain data relating to the aforementioned SaaS software and maintenance services, so that the Processor may protect itself against any potential claims or litigation.

5. Data subjects

The categories of data subjects are:

- The recipients of the Data Controller's services.
- The Data Controller's employees

6. Special categories of data

The Processor and any person under its responsibility shall refrain from processing special categories of data as defined in Article 9 of the GDPR during the performance of the service contract, to which they may have access.

7. Recipients of the data

The recipients of the data are:

- The Data Controller,
- The Data Controller's authorized internal departments and employees,

- The subsequent processors listed below (Sub-Appendix B)

Sub-Appendix B – Authorized Subprocessors

Upon the entry into force of the Clauses, the Data Controller authorizes the engagement of the Sub-processors listed below:

NAME	SIREN	ADDRESS	RELEVANT PROCESSING ACTIVITY(IES)
OVH	424 761 419	OVH, 2 RUE KELLERMANN 59100 ROUBAIX	<ul style="list-style-type: none">● Provision of the SaaS Service● Hosting of data provided by the Licensee● Maintenance related to the provision of the Platform.
Scaleway	433115904	BOOKMYNAME DEDIBOX - SCALEWAY - ONLINE, 8 RUE DE LA VILLE L'EVEQUE 75008 PARIS	<ul style="list-style-type: none">● Provision of the SaaS Service● Hosting of data provided by the Licensee● Maintenance related to the provision of the Platform.

Sub-Appendix C - Instructions Regarding the Use of Personal Data

1. Purpose

The processing of personal data by the Processor on behalf of the Data Controller is carried out by the Processor in accordance with the license agreement.

2. Security of processing

The level of security must take into account the sensitivity of the data and also the data subjects.

When the processing involves a large volume of personal data falling under Article 9 of the GDPR, relating to “special categories of data,” it is mandatory to implement a level of security appropriate to the identified risks. This level of security must be proportionate to the sensitivity of the data and the risks to the rights and freedoms of the data subjects, in accordance with Article 32 of the GDPR.

The Processor then has the right and the obligation to make decisions regarding the technical and organizational security measures that must be implemented to achieve the necessary (and agreed-upon) level of data security.

3. Cooperation with the Data Controller

The Processor must, to the extent possible—within the scope and extent of the assistance specified below, cooperate with and assist the Controller in accordance with Clause 2 of Appendix 1.

4. Retention period/erasure procedures

Personal data may be retained by the Processor until the end of the contractual relationship.

Upon termination of the provision of personal data processing services, the Processor must return the personal data in accordance with Clause 6 of Appendix 1, unless the Data Controller—after the contract is signed—has changed its initial choice. This change must be documented and retained in writing, including in electronic form, in accordance with the clauses.

5. Place of Processing

The processing of personal data under the Clauses may not be carried out in locations outside the EU without the prior authorization of the Data Controller.

Prior to any transfer outside the European Union, the Processor must first seek the approval of the Data Controller. To this end, the Standard Contractual Clauses applicable under Article 46(2)(c) and (d) of the GDPR must be submitted to the Data Controller 60 business days prior to the transfer.

If the Data Controller does not provide, in the Clauses or subsequently, documented instructions regarding the transfer of personal data to a third country, the Processor is not authorized, under the Clauses, to carry out such a transfer.