

## SMART DATA VALUE – TERMS AND CONDITIONS

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### 1 GENERAL

1.1 Scope. These terms and conditions (**T&C**) apply to the Smart Data Value software (the **Software**) developed by neo technologies SA, a Swiss company with seat in Renens, Vaud, Switzerland (**neo technologies, we, us or our**), and any services we provide in connection with the Software (the **Services**).

1.2 Acceptation. Anyone who download, accesses and/or uses the Software or the Services (a **User or you**) acknowledges having read, understood and agreed to these T&C. Any use of the Software or Services on behalf of a legal entity is deemed acceptance of these T&C also for this legal entity. In this case, these T&C apply to you and your organization (both referred to as “you” in this document).

1.3 Infrastructure. You are responsible for procuring at your expenses the software and infrastructure (computer, software, telecommunication means, etc.) required to access the Software as specified in the Software technical infrastructure, and for the payment of any costs incurred through their use.

### 2 LICENCE

2.1 License: Upon purchasing the product, we grant you a non-exclusive, non-transferable, revocable right, without right of sublicense, to access the Software in object code for your internal business purposes only, subject to limitations set forth in these T&C. We and/or our licensors reserve all rights on the Software, its content and the Services not expressly granted herein.

2.2 Metrics and Annual Audit: The metrics used for calculating maintenance fees and the product price will be detailed in Appendix A of this contract. The client undertakes to provide, once per year, all necessary information for the annual metrics audit. This audit will be conducted by us or any third party designated by us.

2.3 Duration of License Validity: The license remains valid as long as the annual maintenance fees are paid within the specified deadlines and the metrics audit is conducted in accordance with the provisions of this contract.

2.4 License Termination: In case of non-payment of maintenance fees within the specified deadlines, the license will be considered terminated. We reserve the right to terminate the license in the event of non-compliance with the terms and conditions outlined in this contract.

*First Level*: Access removed. Upon non-payment or violation of terms, the user's access to the licensed material will be promptly revoked.

*Second Level*: Contract termination. If issues persist, and non-compliance continues, the license agreement will be terminated. This will result in a cessation of all rights granted under this agreement.

*Pre-termination Requirement*: Before finalizing the contract termination, it is mandatory for the party in breach to settle any over-usage charges accrued during the period of non-compliance. These charges must be paid in full to bring the account up to date.

This multi-level approach ensures a fair process, allowing for corrective actions at the initial stage while also providing a clear pathway to terminate the contract if issues persist.

2.5 Annual Communications: The client agrees to transmit all required information for the annual metrics audit to support.sap@neo-technologies.ch no later than 30<sup>th</sup> of November each year. Failure to fulfill this obligation may result in license termination.

### 3 User's Duties and Responsibilities

3.1 Restrictions of Use. You must use the Software in conformance with these T&C and all laws and regulations applicable to you. Subject to mandatory law to the contrary, you are not allowed to:

- a) copy, modify or create derivatives of any part or all of the Software;
- b) resell, transfer, assign, lease, lend, or license the Software to third parties;
- c) access the source code of the Software, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or its infrastructure;
- d) infringe, or cause a third party to infringe, any applicable law or regulation;
- e) infringe any intellectual property right, or other proprietary right or right of publicity or privacy;
- f) disrupt or attempt to disrupt the Software or any other person's use or enjoyment of the Software;
- g) attempt to gain unauthorized access to the Software, or to networks from which portions of the Software are provided, including by circumventing or bypassing security mechanisms for the Software;
- h) make any alteration to the Software, use or insert any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

- i) access or use any part of the Software for the purpose of building a competitive product or service or copying its features or user interface;
- j) allow third parties outside your organization to use all or part of the Software or its functionalities.
- k) Exceed any metrics used to calculate your fees.

3.2 Monitoring. We reserve the right – but neither undertake nor assume the obligation – to monitor the use of the Software. We reserve the right to investigate on any infringement or behaviour affecting the Software and to cooperate with competent authorities in case of violation of any applicable law.]

3.3 Non-compliance. Without limiting the rights otherwise provided under these T&C, in the event of non-compliance with these T&C, we reserve the right to revoke your license and/or to provide you with the Services. In such case, we will first grant you a period of 15 days to cure the breach unless the breach is not curable or may materially impact us.

## **4 SUPPORT AND MAINTENANCE, UPDATES AND MODIFICATIONS**

4.1 Maintenance Services. Provided you pay annual maintenance fees to sustain the validity of the license, we will provide maintenance services aiming at identifying and attempting to resolve problems which may negatively affect the proper functioning and availability of the Software. Your subscription plan define how you may contact our support team in case you encounter problems affecting the Software. The amount of maintenance fees is calculated based on the metrics defined in Appendix A.

4.2 Updates. If we provide you as part of our maintenance Services updates or other improvement, these components will constitute an integral part of the Software and the rules of these T&C apply to such updates. You agree that we may require you to accept and download updates for further use or access to the Software when it is necessary for proper functioning of the Software. The update might require an implementation, support, project management, etc. which will be part of specific project and quoted separately.

## **5 Subscriptions**

5.1 Fees. You must pay the licensing fees indicated in your Software documentation and any service fee as specified in any plan you subscribed to. Unless otherwise stated, the fees are in Swiss francs (CHF), with VAT charged on top at the applicable rate. Prices may be displayed in foreign currencies based on the daily conversion rate, but payments will be debited in Swiss francs. Fees are due and payable in advance of their respective terms, as indicated in the documentation, and non-refundable in case of termination. Additional fees as incurred pursuant to your use of the Services or the Software are invoiced in arrears, on a regular basis.

5.2 Plan Duration and Termination. Subscription are concluded for the initial minimal term indicated in the plan, and in the absence of a term specified, for an initial duration of 12 months, subject to non-renewal or termination in accordance with this Section 5.2 (the **Initial Term**). Subscription shall be automatically renewed upon expiry of the Initial Term, or then current renewed term (each a **Renewed Term**, and together with the Initial Term, the **Term**), for consecutive Renewed Term of the same duration as the Initial Term, subject to cancellation by either Party in accordance with this Section 5.2.

You may terminate your subscription at any time by sending an email to [contact@neo-technologies.ch](mailto:contact@neo-technologies.ch) in which case your subscription will terminate upon the end of the then current Initial Plan or Renewed Plan. We may terminate your subscription at any time in which case your subscription will terminate upon the end of the then current Initial Plan or Renewed Plan. We may terminate your subscription before its term when justified by your breach of these T&C. We will have no further liability to you.

5.3 Changes. We may modify the content or pricing of our subscription plans at any time, e.g. by adding new services for additional fees, or amending current plans, at any time and in our sole discretion, provided that if the change concern your current subscription plan, we will notify you in advance and the increase in fees will only become effective upon the forthcoming term of your subscription.

5.4 Information and Audit. You must provide us with any information we require to calculate the amounts of the fees due for your use of the Software or any subscription. We have the right to audit, or to appoint an independent auditor under appropriate non-disclosure conditions to audit your use of the Software, and your records to assess the amount of the fees due, and you must contribute at your costs to such audits. If an audit shows that you have exceeded the metrics or other specification used to calculate your fees, you shall pay the difference between the fees actually paid and the fees you should have pay for your actual use of the Software.

## **6 INTELLECTUAL PROPERTY**

6.1 Ownership. We and our licensors own the copyright and all intellectual property rights in and to the Software, the Services and the content published on or through it.

6.2 **Infringement.** If you think that the Software or the provision of any content of the Software infringe any copyright or other intellectual property right, you may at all times contact us at [contact@neo-technologies.ch](mailto:contact@neo-technologies.ch) and we will investigate your request.

6.3 **Feedback.** Although we are always appreciative of any suggestion or idea for improving or otherwise modifying the Software or any Services (**Feedback**), we have not agreed to and do not agree to treat as confidential any Feedback you may provide to us. Nothing in these T&C or in the interactions between you and us will restrict our right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting you.

## **7 PRIVACY AND DATA PROTECTION**

We have issued a privacy notice, accessible at <https://www.neo-technologies.ch/solutions/solutions-neo-technologies/smart-data-value-2/>, which describes how personal data is collected through the Software and for what purposes. That privacy notice, as amended from time to time, forms an integral part of these T&C.

## **8 LIMITED WARRANTIES AND REMEDIES**

We warrant that the Software will meet the agreed specification, as described in the applicable documentation, for 90 days from the date it is first licensed to you. If it does not, and you notify us within the warranty term, then we will, at our option (1) return the price you paid for the Software, or (2) correct the Software.

We further warrant that we will provide support and maintenance Services in accordance with any applicable SLA. Your remedies for breach of this warranty are specified in the SLA.

The remedies above are your sole remedies for breach of the warranties in this section. Except for the limited warranties above, we provide no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose. In particular, we neither represent nor warrant (i) that the Software, the content or the Services will meet your requirements or expectations; (ii) that the operation of the Software or Services will be uninterrupted or error-free; (iii) that the Software will be accurate, truthful, or exhaustive; (iv) that the Software and results that can be obtained from the use of the Software will be accurate or reliable ; and (v) that the Software, Services and content will be updated, error-free, that any errors will be corrected. **The use of the Software, the content and/or Services is entirely at your own risk and we disclaim any warranties regarding your use thereof and/or any decisions taken by you based on insights gained from your use of the Software the content and/or Services.** Any data, document or content obtained through the use of the Software and/or the Services is downloaded or obtained at your own risk.

## **9 LIABILITY**

Subject to the limitations specified below, we will be liable to you for direct damages caused by our gross negligence or wilful act under the T&C.

To the extent permitted by law, we disclaim any liability for simple negligence as well as for any damages, whether foreseen or foreseeable, or whether we have been advised of the risk thereof, or losses related to the interruption of business, loss of profits, of use, of actual or anticipated profit, of revenue, of anticipated savings, of opportunity, of goodwill, of reputation, loss of, damage to or corruption of data, or any other indirect, special, incidental, exemplary, or consequential damages or losses of any kind, regardless of the form of action, whether in contract, tort, strict liability or otherwise.

Without prejudice to the foregoing limitations, our total liability during any period of 12 months is limited to the price actually paid for the Service during the 12 months preceding the events giving rise to the claims.

## **10 INDEMNIFICATION**

You must defend, hold harmless and indemnify us and our licensors for any claim, demand, dispute, litigation, damage or loss (including reasonable attorney's fees) incurred by us or another user of the Software or a third party arising out of your access or use of the Software and/or any infringement of these T&C.

## **11 MISCELLANEOUS**

11.1 **Severability.** If any provision of these T&C are or becomes invalid, unenforceable or non-binding, this shall not affect any other provision thereof. In such event, such invalid, unenforceable or non-binding provision shall nonetheless be enforced to the fullest extent permitted under applicable law, insofar as the invalid, unenforceable or non-binding provision shall be replaced by a valid, enforceable and binding provision reflecting to the greatest extent possible the intent of the original provision.

11.2 **Assignment.** We may at our own discretion at any time assign and/or delegate our rights and obligations under these T&C or any part of them to any third party without notice to you. You may not assign your rights and obligations

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under these T&C in whole or in part to any person or entity without our prior written consent, and any unauthorized assignment and delegation by you is void.

11.3 Force Majeure. We cannot be held liable for failure or delay in fulfilling our obligations due to *force majeure* events such as natural disasters of a substantial magnitude, wars, governmental or official acts, riots, strikes, epidemics or pandemics, or breakdowns of electrical or telecommunications networks. If such an event occurs, we will inform you immediately.

11.4 No waiver. Any delay or failure by us to apply all or part of the provisions of these T&C, regardless of the frequency and duration thereof, shall not be deemed a general waiver thereof.

## **12 GOVERNING LAW AND JURISDICTION**

12.1 Governing Law. The T&C are governed exclusively by Swiss law, without reference to its conflict of laws provisions.

12.2 Jurisdiction. The competent courts at the registered office of neo technologies have exclusive jurisdiction to settle all disputes in connection with these T&C.

## **13 Translations and Amendments**

13.1 Translations. Only the English version of this document has legal effect. Any translations of this document to other languages are provided for your convenience only.

13.2 Amendments. The T&C may be amended from time to time in which case you will be notified by any appropriate mean (including through the Software or via email or other notification mechanisms). If you do not accept the amendments thus made by us, your sole remedy is to no longer access and/or use the Software.

## **14 CONTACT**

For any questions regarding the Software or these T&C, you may contact us at [contact@neo-technologies.ch](mailto:contact@neo-technologies.ch).

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**APPENDIX A**

Metric definition

The metric used to calculate the acquisition price and the licence fee of the product “Smart Data Value” is called “SAP EDM profile”.

The following counting rules apply:

- Number of active SAP EDM profiles assigned to device registers and points of delivery during the audited period.
- Consider direct assignments of registers to a delivery point and assignments of registers via an installation.
- Exclusion of the following 3 profile types which are irrelevant for the EDM value replacement:
  - 4 “Synthetic profile”
  - 5 “Integral profile”
  - 7 “Formula profile”
- Select only of profiles with “Location of Original Profile Values” defined with “Profile Values Originate from EDM”.
- Consider objects with a deletion flag, as there is nothing to prevent them from being processed with SAP EDM and “Smart Data Value”.