



GENERAL TERMS AND CONDITIONS

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1 DEFINITIONS

1.1 Service provider

Cloud Group NV, based in Belgium, 2018 Antwerp, Delacensierstraat 14, registered under company number 0533.928.877 and operator number 3697 (BE), ACM/22/180630 (NL), 21/068 (DE), trading under the commercial name SmartEcho (hereinafter "SmartEcho").

1.2 Partner

The commercial partner that has entered into a cooperation agreement with SmartEcho for the sale, provision and support of SmartEcho services to End Customers.

1.3 End Customer

The natural or legal person with whom the Partner directly enters into an agreement for the purchase of SmartEcho services.

1.4 Equipment

The set of devices, systems, cabling, network components, hardware and peripherals supplied, sold, leased, managed or installed by SmartEcho and/or the Partner at the End Customer for the purpose of SmartEcho services.

1.5 SmartEcho

The trade name under which Cloud Group NV offers its voice and cloud telephony services internationally.

1.6 Agreement

The commercial agreement entered into between the Partner and the End Customer, governing the provision of SmartEcho Services. Where appropriate, certain operational or legal obligations may be agreed directly between SmartEcho and the End Customer.

1.7 General Terms and Conditions

These general terms and conditions of SmartEcho applicable to the technical and operational operation of the SmartEcho Platform and the services provided by SmartEcho to the Partner.

1.8 Tariff

The prices communicated by the Partner to the End Customer regarding calls, subscriptions, hardware, software, services and additional costs. The Partner independently determines the commercial rates towards the End Customer.

1.9 Backbone Provider

The underlying network and telecom providers that SmartEcho works with for the delivery and routing of voice and data traffic.

1.10 Service

The set of hosted voice services, IP telephony, PBX functionalities, platform services through the My SmartEcho Admin Center, monitoring, network infrastructure, applications and supporting cloud and management services provided by SmartEcho.

1.11 Emergency operations

Any work necessary to prevent or resolve acute or imminent incidents, failures or risks to the platform, services, security or availability of SmartEcho or its Backbone Providers.

1.12 Force Majeure

Any unforeseeable event beyond the reasonable control of the Parties, which makes the performance of contractual obligations temporarily or permanently impossible, including but not limited to: fire, power failure, natural disasters, sabotage, war, governmental measures, pandemics, labour disputes, network failures, hacking, ransomware attacks, cyber incidents or other circumstances of an extraordinary nature.

2 SERVICE

2.1 Acknowledgement

The Partner acknowledges having knowledge of the operation, nature, modalities and limitations of the SmartEcho Services prior to entering into the Agreement with the End Customer.

2.2 Description

The Service includes:

- establishing telephone communications via the SmartEcho platform;
- providing hosted IP telephony, PBX functionality, platform services via the My SmartEcho Admin Centre and additional management services;
- providing additional services such as network management, monitoring, hardware deliveries and software support, if agreed.

The End Customer's use of the Service is limited to the conditions and limits set out in the Agreement between Partner and End Customer.

2.3 Changes

SmartEcho reserves the right to make changes to the Service for technical, legal or operational reasons, subject to prior written notice to Partner with a minimum of 14 calendar days.

If the Partner objects in writing within this period, SmartEcho will consult with the Partner. In the absence of timely objection, the changes will be deemed accepted.

Adjustments resulting from indexations, legal obligations, security measures or technological optimisations are considered valid grounds for changes.

2.4 Non-payment

If the Partner and/or End Customer fails to fulfil payment obligations on time in accordance with the agreed payment terms, SmartEcho shall be entitled to:

- send reminders and notices of default,
- in case of persistent non-payment after notice of default, to temporarily suspend the Service,
- in the event of persistent non-payment to permanently discontinue the Service.

Any suspension or termination shall be without prejudice to SmartEcho's right to take additional compensation or collection measures.

2.5 Nomadic nature of VoIP

The Partner acknowledges that, due to the nomadic nature of VoIP technology, access to emergency services (such as emergency numbers 112 or 911 and other local variants) cannot always be guaranteed via the Service. The Partner must correctly and fully inform its End Customers about this.

2.6 Misuse

In case of misuse, such as hacking, fraudulent use or other unauthorised acts by the End Customer or third parties, SmartEcho is entitled:

- temporarily suspend the relevant services to limit damage;
- immediately inform the Partner thereof, stating reasons;
- reactivate the Service after consultation with and at the written request of the Partner.

The Partner shall in all cases remain fully responsible for the use of the Services by End Customers and shall ensure preventive security, access control and fraud prevention measures.

2.7 Transfer of the Agreement

The Agreement between SmartEcho and the Partner is not transferable without SmartEcho's prior written consent. In case of transfer by merger, demerger, acquisition or sale of activities, the Partner must inform SmartEcho in writing in advance.

2.8 Connection

If the Partner and/or End Customer delays the delivery of the Service after signing the offer, the initial offer or acceptance of the agreement will be automatically extended. If the delay exceeds six (6) months, SmartEcho reserves the right to unilaterally terminate the agreement or charge additional fees. In any case, the one-off invoice, as well as any discounts granted, will still be invoiced in full, as the effective delivery of the agreed service was assumed at the time of entering into the agreement.

3 EQUIPMENT, APPLIANCES AND INSTALLATION

3.1 Own equipment

The End Customer must have a stable Internet connection with sufficient bandwidth, provided by a third-party Internet provider of its choice. The Partner or End Customer is responsible for the selection, purchase, installation, operation and conformity of own equipment and infrastructure. Equipment must comply with applicable regulations, standards and homologations.

3.2 Installation

3.2.1 Reconfiguration local network

If, upon installation, additional configuration work is necessary to adjust local network infrastructure or firewall settings for correct operation of the Service, these services may be charged separately by the Partner or SmartEcho in direction.

3.2.2 Absence

If a scheduled installation cannot proceed due to the absence of the End Customer or Partner, reasonable travel and/or waiting time costs may be charged by the Partner or SmartEcho, with a minimum lump sum of two hundred and fifty euros (€250) per missed appointment or intervention.

3.2.3 Lack of facilities

If an installation is prevented by the absence of necessary facilities (such as an active internet connection, cabling or power supply), additional costs may be charged. Such interventions are subject to a minimum fee of eighty euros (€80) per work hour started.

3.2.4 Remedying of installation problems

If technical or infrastructural constraints at the End Customer make installation impossible, and these are not remedied within a reasonable time, SmartEcho reserves the right to terminate the agreement. Additional costs incurred may be charged.

3.2.5 Delay by End Customer

If installation is delayed by more than three (3) months due to the actions of the End Customer or Partner, the one-time setup fee may still be invoiced.

3.2.6 Long-term postponement

If the installation and/or number porting is delayed by more than six (6) months after signing the offer, SmartEcho and/or the Partner reserve the right to still invoice previously granted discounts or benefits.

3.3 Liability equipment and devices

SmartEcho shall not be liable for defects or malfunctions of equipment supplied by third parties or purchased by the End Customer himself, nor for wear and tear, traces of use, damage due to improper use or damage outside the warranty period.

3.4 Liability for failures in the Service

SmartEcho is not liable for failures in the Service caused by:

- incorrect configuration of local networks or devices at the End Customer's premises;
- failures at third-party suppliers or partners of the End Customer;
- general network problems outside its own platform.

3.5 Installation and delivery

3.5.1 One-off invoice

The initial installation, delivery and configuration costs will be invoiced at or shortly after installation of the equipment or delivery of the Service, regardless of the activation period of the Service.

3.5.2 Delay in delivery

Any delays in delivery, for whatever reason, shall not entitle to defer payment of already invoiced one-off costs, unless otherwise agreed in writing.

3.5.3 Cooperation of End Customer

The End Customer or Partner shall provide timely access to the installation site, presence of technical contacts, power supply, cabling and all necessary information for smooth implementation.

3.6 Ownership in case of leased or managed devices

3.6.1 Ownership rights

Leased or managed devices the End Customer remain the property of SmartEcho or the Partner. Ownership removal, resale, subletting, pledging or lending to third parties is prohibited.

3.6.2 Third party claims

In case of seizure or third party claims on rented devices, the End Customer shall immediately inform SmartEcho and/or the Partner and inform concerned parties of SmartEcho's and/or the Partner's ownership.

3.7 Ownership in case of purchased devices

Upon purchase, ownership of the device passes to the End Customer upon full payment. Manufacturer's warranty is standard one (1) year, unless otherwise stipulated by the manufacturer. Damage due to improper use, moisture, overvoltage, lightning strikes or force majeure is excluded from the warranty. In the event of a defect outside of warranty, the End Customer shall bear the cost of replacement.

4 INVOICING AND COSTS

4.1 Charged costs

The Partner shall invoice the End Customer for the agreed tariffs for calls, subscriptions, services, hardware, software and additional services in the context of providing the SmartEcho services.

4.2 Call Charges

Call charges will be invoiced periodically according to the tariff structure agreed by the Partner to the End Customer.

4.3 Change in call rates

SmartEcho reserves the right to adjust its base term prices and technical cost prices to the Partner due to changes in regulations, market prices, indexations or underlying supplier costs. The Partner has the right to pass these adjustments on to the End Customer or not.

Rates may be adjusted annually based on indexations such as the Consumer Price Index (CPI), in accordance with European directives. Such indexation does not count as a contract amendment. In case of a CPI price adjustment, the Partner cannot unilaterally terminate the Agreement.

4.4 Taxes

All rates and prices are exclusive of applicable taxes, charges or surcharges. Taxes payable shall be calculated in accordance with applicable tax laws and stated separately on invoices.

4.5 Payment term

The Partner independently determines the payment terms towards the End Customer.

The payment terms and payment modalities between SmartEcho and the Partner shall be mutually agreed in the Partner Agreement or separate arrangements.

4.6 Interests

In case of late payment of outstanding invoices between SmartEcho and Partner, late payment interest and administrative costs may be charged in accordance with the mutually agreed payment terms. The Partner is entitled to apply similar terms towards End Customer.

4.7 Erroneous payments

Any erroneous or duplicate payments by the End Customer shall be offset against future invoices or refunded within a reasonable period of time after determination and mutual agreement.

4.8 Creditworthiness

SmartEcho and/or the Partner shall have the right to assess the creditworthiness of the End Customer prior to or during the performance of the Agreement. Based on this assessment, SmartEcho may impose additional securities on the Partner, such as a deposit, bank guarantee, prepayment or direct debit arrangement.

If the End Customer's creditworthiness assessment proves insufficient, SmartEcho and/or Partner reserves the right to withdraw the offer or suspend further performance of the agreement.

4.9 Payment modalities

SmartEcho and/or Partner reserves the right to make certain payment modalities mandatory at any time (such as SEPA direct debit, prepayment or bank guarantee), if, in SmartEcho's opinion, this is operationally or risk-management necessary.

4.10 Consequences of non-payment

In case of repeated or structural non-payment by the End Customer, SmartEcho and/or Partner may, after notice of default and without further obligations, temporarily suspend the Services or terminate the Agreement, without prejudice to its right to recover outstanding amounts and any additional damages.

4.11 Digital Invoicing

Invoices from SmartEcho and/or the Partner to the End Customer shall be delivered electronically via PEPPOL, by email in PDF format or via the SmartEcho platform, depending on the applicable local legal provisions and the invoicing method agreed between the parties.

The End Customer shall be responsible for keeping its billing data up to date and the timely receipt, processing and payment of invoices sent.

4.12 Quotation calculations

Any simulations, quotations or calculations of expected savings or call consumption prepared by SmartEcho and/or Partner, or its representatives, employees are purely indicative and not binding. No rights or refunds may be derived therefrom in case of discrepancies between estimated and actual usage data.

4.13 Delivery and shipment

- Any delivery or shipping costs shall be borne by the Partner or End Customer, unless otherwise agreed.
- Mentioned delivery times are indicative and not binding.
- Damage established upon delivery must be reported by the Partner or End Customer immediately and in writing in accordance with the agreed complaints procedure.

5 CLOUD PBX

5.1 Hosted PBX

Hosted PBX services are delivered to the End Customer via the SmartEcho platform under the management of the Partner. The Partner invoices the hosted PBX services directly to the End Customer according to the mutual agreements between Partner and End Customer.

5.2 Rates

The tariffs applied by the Partner for hosted or dedicated VoIP services are agreed in the commercial relationship between the Partner and the End Customer. SmartEcho applies separate tariff conditions towards the Partner.

5.3 Changes

SmartEcho and/or Partner reserves the right to change its underlying technical tariffs and conditions towards the End Customer due to, inter alia, changes in market prices, regulations, underlying suppliers, or indexations. SmartEcho and/or Partner will inform the End Customer in writing with a minimum period of fourteen (14) calendar days.

If the End Customer does not formulate a written objection within this period, the adjustments will be considered accepted. Annual indexations according to the Consumer Price Index (CPI) will not be regarded as contract amendments and are not entitled to be cancelled.

5.4 Applicability of previous provisions

The provisions on billing, payment terms, indexations and suspension in the event of non-payment as laid down in ARTICLE 4 apply in full to the hosted PBX services.

6 APPLICATION, PORTING OF TELEPHONE NUMBERS

6.1 Porting authority

The Partner acts as the first point of contact for the End Customer in case of applications for number porting or number requests. The Partner obtains, on the basis of the assignment (Letter of Authorisation, LOA) signed by the End Customer, the necessary power of attorney to request and execute number transfers and number requests from SmartEcho on behalf of the End Customer.

6.2 Number management

The administrative management, registration and technical execution of number requests, number transfers and number allocations shall be provided by SmartEcho. The Partner remains responsible for the correct delivery of the required data and documents on behalf of the End Customer.

6.3 Number transfer rules

6.3.1 Single numbers

When transferring single numbers, only the specific number will be ported if it is not part of a larger number series.

6.3.2 Number series

If the number is part of a continuous series, the entire series should be transferred. Any additional costs for these additional numbers will be invoiced separately to the End Customer.

6.3.3 Turnaround time

The standard lead time for number porting is on average between eleven (11) and thirty (30) working days, subject to correct and complete delivery of all necessary data.

6.4 Emergency numbers

The Partner acknowledges that access to emergency numbers (such as 112, 911 or local equivalents) via VoIP services cannot technically be guaranteed in all cases. The Partner bears responsibility for correctly informing End Customers about this. Where possible, SmartEcho can provide technical workarounds upon request.

6.5 Port-out restrictions

SmartEcho may refuse a request for number porting to a third operator in the following cases:

- If outstanding payment obligations with SmartEcho or Partner have not yet been paid;
- If insufficient or incomplete identification and verification documentation is provided;
- To protect against identity fraud, nummerkaping or unauthorised portations;
- If the End Customer has not yet confirmed in writing that it is aware of any financial penalties or fees due arising from early termination or other contractual obligations.

Portation orders will be executed only after successful authentication of the identity of the End Customer.

7 APPLICATION, PORTING OF FAX NUMBERS

7.1 Porting authority

The Partner acts as the first point of contact for the End Customer in case of requests for porting or requesting fax numbers. The Partner obtains, based on the assignment (Letter of Authorisation, LOA) signed by the End Customer, the power of attorney to request and execute fax number portations and requests from SmartEcho on behalf of the End Customer.

7.2 Number management

The administrative management, registration and technical execution of fax number requests, transfers and allocations will be provided by SmartEcho. The Partner is responsible for the correct delivery of the required data on behalf of the End Customer.

7.3 Number porting rules

7.3.1 Single numbers

When transferring fax numbers, only single, analogue fax numbers can be ported if they do not belong to a broader number range.

7.3.2 Turnaround time

The standard lead time for fax number portations averages between eleven (11) and thirty (30) working days, subject to correct and complete delivery of all necessary data.

7.4 Rates

Any fees and charges relating to the management, registration or porting of fax numbers shall be contractually agreed between SmartEcho and the Partner. The Partner independently determines the passing on of these costs to the End Customer.

8 GUARANTEES

8.1 General provisions

SmartEcho grants only the express warranties set out in these General Terms and Conditions and the separate agreement with the Partner. All other, implied or tacit warranties are excluded, to the fullest extent permitted.

8.2 Service Level Agreement (SLA).

SmartEcho guarantees for its platform services an annual operational availability of at least 99.9%, barring situations of force majeure or pre-announced maintenance interventions.

If the availability falls below 99.1% for a period of more than three (3) consecutive months, the End Customer has the right to unilaterally terminate the agreement without penalty or compensation.

Maintenance works announced in advance to the Partner via the SmartEcho platform or by email are not considered downtime.

The SLA guarantee covers only the operation of the SmartEcho platform services and SmartEcho's technical infrastructure. External connectivity, internet providers, local infrastructure of the End Customer or third party suppliers are outside the scope of this guarantee.

Any compensation for breach of this SLA shall be limited to the amount contractually agreed for the use of the PBX service during the relevant period.

8.3 Manufacturer's warranty hardware

Hardware supplied by SmartEcho or delivered to the Partner is subject to a manufacturer's warranty of one (1) year as standard, unless otherwise agreed in writing.

Defective devices may, after approval by SmartEcho, be returned for handling under the manufacturer's or distributor's RMA process. The assessment of the application of manufacturer's warranty is done exclusively by the manufacturer or its authorised distributor.

8.3.1 Exclusions

Damage due to accidental damage, moisture, misuse, improper handling or force majeure is excluded from manufacturer's warranty.

8.3.2 Replacement devices

There is no right to a replacement device during the RMA process, unless expressly agreed in advance by contract.

8.3.3 RMA processing time

The RMA process can vary between four (4) and twelve (12) weeks, depending on manufacturer and distributor.

8.4 Costs outside warranty

For out-of-warranty defects or excluded claims, the Partner or End Customer shall bear the costs for repair, reinstallation or replacement of hardware, including additional configuration or installation costs.

9 LIABILITY

9.1 Quality of Service.

SmartEcho and its subcontractors undertake to ensure the quality of the Services in accordance with the agreed Service Level Agreements (SLAs).

9.2 Limitation of liability

SmartEcho's liability is limited to:

- damages resulting directly from proven gross negligence, fraud or wilful default on the part of SmartEcho;
- compliance with essential contractual obligations.

SmartEcho shall not be liable for any indirect, consequential or immaterial damages, such as loss of profits, lost sales, lost savings, loss of reputation, loss of data or commercial opportunities.

SmartEcho's maximum aggregate liability to the Partner and/or End Customer, for all claims combined during any period of twelve (12) consecutive months, shall be limited to ten percent (10%) of the invoiced subscription fees during such period, with an absolute maximum of two thousand euros (€2,000).

9.3 Pre-agreement information

The Partner and/or End Customer acknowledges that, prior to the Agreement, it has been adequately informed about:

- the functionalities, features and limitations of the hardware, software and Services;
- possible integration or compatibility limitations with existing networks or systems.

Claims based on known or previously discussed limitations are excluded.

9.4 Infrastructure and software of the End Customer

The Partner and End Customer are solely responsible for:

- the selection, procurement and suitability of their own infrastructure and software;
- security of networks, data, access and authentication;
- proper compliance with applicable data management, content, security and privacy legislation.

9.5 Third party costs

Third party costs or claims may be recovered from SmartEcho only upon prior written agreement.

9.6 Own responsibility

From commissioning of the hardware or services provided, the Partner or End Customer remains responsible for:

- damage or loss caused by misuse, carelessness or negligence;
- loss, damage or theft of equipment provided, barring proven fault of SmartEcho.

9.7 Damage and theft

In case of damage or loss of rented or managed hardware, the Partner or End Customer shall remain liable for reimbursement of the replacement value, except if the loss is solely due to SmartEcho.

9.8 Malfunctions and defects

In case of defects or malfunctions of the hardware provided, SmartEcho's liability is limited to repair or replacement of the device. No compensation shall be due for loss of production or consequential damages.

9.9 Infringement of intellectual property rights

SmartEcho shall indemnify the Partner against direct damages and costs resulting from proven infringements of intellectual property rights of third parties to the extent that such infringements result from products or software developed or supplied by SmartEcho itself. This indemnification does not apply to infringements caused by acts, modifications or use by the Partner or the End Customer in breach of the contract terms.

9.10 Contractual breaches by the Partner

The Partner shall be liable for all direct and indirect damages resulting from non-compliance with contractual obligations to SmartEcho, including damages caused by its appointees or End Customers.

9.11 Leased and/or managed devices

9.11.1 Duty of Care

The Partner and End Customer undertake to manage rented devices with due diligence, in accordance with their purpose and maintaining good condition.

9.11.2 Changes or repairs

No changes, additions or repairs may be made to rented hardware without the prior consent of SmartEcho and/or Partner.

9.12 Reporting faults

The Partner must report any identified malfunction or defect to SmartEcho in a timely manner and in writing for further handling.

9.13 Technical assistance

Technical support is provided by SmartEcho exclusively to the Partner within normal service hours as contractually agreed. In this respect, the Partner acts as the first point of contact for the End Customer and provides first-line support to its customers itself in accordance with the agreement entered into between the Partner and the End Customer.

Performance outside standard service hours may be charged separately to the Partner in accordance with the rates agreed between SmartEcho and the Partner.

In the first instance, the End Customer should contact the Partner directly for all technical and operational support questions.

9.14 Exclusions from assistance

Repairs due to abnormal use, force majeure or carelessness are excluded from standard technical assistance and are entirely the responsibility of the Partner or End Customer.

9.15 Alternative appliance

If a defective rented device cannot be repaired, the original type is no longer available, or if the SmartEcho wishes to change the type for strategic reasons, the SmartEcho may opt for an alternative device.

9.16 Network failures

SmartEcho shall not be liable for failures, delays or transmission errors caused by:

- underlying carrier interconnections;
- backbone providers;
- external networks outside SmartEcho's direct control.

9.17 Interferences by third parties

SmartEcho and its backbone providers shall not be liable for damages resulting from external intrusions, hacking or interference with Partner's or End Customer's IT systems.

9.18 My SmartEcho Platform (Admin Centre)

SmartEcho shall not be liable for:

- temporary unavailability of the Admin Center;
- failures caused by interruptions at external networks, mobile providers or third party equipment.

9.19 SMS Platform

SmartEcho does not guarantee delivery of sent (bulk) SMS messages or notifications. Sent messages are always charged as consumed credits, regardless of successful delivery.

The Partner is fully responsible for the lawful use of the SMS Platform by itself or its End Customers.

9.20 SmartEcho App

SmartEcho shall not be liable for any additional mobile data or roaming charges caused by the use of the SmartEcho mobile application. The Partner and End Customer remain responsible for their own mobile contract terms.

9.21 Ombudsman Services

The Partner and End Customer reserve the right to refer disputes to the competent national telecoms ombudsman services in accordance with applicable regulations.

9.22 Fraud and abuse

The Partner and/or End Customer remains responsible for:

- immediately reporting fraud, theft or misuse of hardware or services;
- any damage or costs resulting from misuse by its own employees, End Customers or external third parties.

10 ENTRY INTO FORCE, DURATION AND END

10.1 Entry into force

The agreement between SmartEcho and/or Partner and the End Customer shall enter into force on the date of signature or on the date as agreed in the signed agreement. The provision of the Services to the End Customer commences after the transfer and/or purchase of one (1) or more numbers.

10.2 Contracts with third parties

SmartEcho is not responsible for obligations or commitments entered into by the Partner or the End Customer with previous or other suppliers. Termination of existing contracts with previous providers is the sole responsibility of the Partner and/or End Customer.

10.3 Consequences of termination with third parties

SmartEcho is not liable for any consequences of any disconnections of internet, data, TV or other services at third-party providers as a result of number portations or other technical migrations.

10.4 Termination in the case of leased or managed devices

10.4.1 General termination modalities

If the agreement was concluded for a fixed-term contract, the agreement is valid until the expiry of this fixed-term contract, unless otherwise stipulated.

After expiry of the fixed term or, if applicable, after expiry of the agreed minimum term, the agreement is tacitly renewed for an indefinite term. From that moment, the Agreement may be terminated by the End Customer subject to observance of a notice period of one (1) month. Termination must be done in writing by mail or registered letter to SmartEcho and/or the Partner.

10.4.2 Termination fee in case of early termination

In case of termination before the expiry of the contractually agreed minimum duration, the End Customer shall owe a termination fee equal to the balance of the remaining terms of the rental or managed contract.

10.4.3 Termination in the event of default

If either party fails to comply with its contractual obligations, the other party may terminate the agreement, subject to prior notice of default and the granting of a recovery period of thirty (30) calendar days. Failure to remedy within this period shall terminate the agreement, without prejudice to the right to compensation.

10.4.4 Tacit extension

Unless otherwise agreed in writing, the agreement is tacitly renewed for an indefinite period of time after the initial minimum duration has expired. In the event of tacit extension, the agreement may be terminated on a monthly basis with a notice period of one (1) month.

10.4.5 Agreements of indefinite duration

Agreements without a predetermined minimum duration are terminable by the End Customer on a monthly basis with a notice period of one (1) month, unless otherwise contractually agreed.

10.5 Grounds for termination

The Agreement may be terminated by either Party in the event of:

- serious breach of contract by the other Party that is not remedied within the set remedial period;
- prolonged force majeure preventing performance for more than thirty (30) consecutive days;
- dissolution, bankruptcy, liquidation or cessation of business activities.

10.6 Immediate termination by SmartEcho

SmartEcho may terminate the agreement with immediate effect:

- in case of persistent non-payment by the Partner and/or End Customer after written notice of default and expiry of the agreed payment deadlines;
- if requested securities such as bank guarantees or sureties are not provided in accordance with the contractual provisions.

10.7 Licences and legislation

If SmartEcho is no longer able to offer its services due to changed legislation, revocation of licences or restrictions imposed by competent authorities, SmartEcho reserves the right to modify the Service and/or unilaterally terminate the contract without any compensation.

10.8 Termination of the Service

Upon termination of the agreement, the Service shall be terminated immediately. Numbers that are not ported to another operator in a timely manner may be permanently lost upon termination.

10.9 Formal requirements for termination

Any notice of termination of the agreement must be in writing, either by e-mail or by registered letter, unless the parties have agreed otherwise.

10.10 36-month contracts

If the End Customer opts for specific promotions whereby installation, one-off costs or hardware are spread over a period of thirty-six (36) months, a fixed-term contract of thirty-six (36) months applies.

This also applies when installation costs are offered at a reduced or symbolic rate, such as one euro (€1), or carried out free of charge as part of a commercial promotion.

10.10.1 Termination fee in case of early termination

In the event of early termination within these thirty-six (36) months, a termination fee is due, calculated as follows: the remaining number of months multiplied by the fixed monthly subscription amount.

If the commercial promotion does not concern a staggered hardware redemption, but another promotional formula in which hardware was offered at a reduced or symbolic rate, the End Customer is additionally obliged to return the delivered devices in good condition to SmartEcho and/or the Partner.

10.10.2 Transition to indefinite duration

At the end of the initial thirty-six (36) months, the agreement will be automatically converted to an indefinite term agreement, terminable on a monthly basis.

10.10.3 Ownership of equipment

Upon expiry of the 36 months and full payment of all outstanding balances, ownership of the relevant equipment will be transferred to the End Customer, unless they remain leases. Upon termination before the expiry of the 36 months, the devices remain the property of SmartEcho and/or Partner and must be returned.

10.10.4 Bankruptcy or insolvency

In the event of bankruptcy, liquidation or legal reorganisation of the End Customer, SmartEcho and/or Partner reserves the right to reclaim the rented or spread-financed devices.

This take-back obligation also applies to devices delivered as part of other commercial promotions or actions where the devices were not purchased in full by the End Customer.

10.11 Hardware and Network as a Service (HaaS / NaaS)

10.11.1 Ownership

All devices and network components delivered under Hardware-as-a-Service (HaaS) or Network-as-a-Service (NaaS) shall remain the property of SmartEcho and/or Partner throughout the term of the agreement.

10.11.2 Collection of hardware

Upon termination, SmartEcho and/or Partner has the right to retrieve the hardware. Under no circumstances may the hardware be transferred, disposed of, sold or pledged by the End Customer.

10.11.3 Damage or defects outside warranty

In case of damage, loss or defects outside the manufacturer's warranty or due to injudicious use, the End Customer will be obliged to reimburse the full replacement value. SmartEcho and/or Partner may charge an additional repair fee in the event of visible damage.

11 RETURN OF RENTED APPLIANCES AND/OR EQUIPMENT

11.1 Return obligation upon termination

Upon termination of the agreement, regardless of the reason, the End Customer shall be obliged to return all rented or SmartEcho and/or Partner managed devices and/or equipment to SmartEcho at his own expense and risk within fourteen (14) calendar days of termination at the return address provided by SmartEcho or Partner.

11.2 Non-timely return

If the End Customer fails to cooperate in collecting or returning the equipment in a timely manner, SmartEcho and/or Partner reserves the right to:

- charge the replacement value of the non-returned devices in full;
- charge additional administrative costs for non-compliance.

The replacement value shall be determined based on the current new-for-old value of the relevant type and model. If the current new value can no longer be determined, the last known new value as known at the time of the initial delivery or sale will be used as a reference.

11.3 Damaged appliances

If, upon collection or inspection, the appliances are found to be damaged beyond normal wear and tear from use, the End Customer shall be obliged to reimburse the full repair or replacement costs.

Normal signs of use (such as slight wear and tear on keyboard, housing or standard components) are not considered damage.

11.4 Specific monitoring equipment

In certain implementations, additional monitoring hardware (such as a monitoring gateway, VPN device or other tool) may be installed by SmartEcho and/or Partner free of charge. Upon termination of the agreement, this equipment must also be returned in full, including accessories.

Unless this equipment is returned within thirty (30) calendar days, flat replacement costs may be charged, with a minimum of fifty euros (€50).

12 OBLIGATIONS OF THE CLIENT

12.1 Correct use of the Service

The Partner and End Customer undertake:

- to use the SmartEcho Services only in accordance with applicable laws and regulations;
- refrain from any use for illegal, unethical, fraudulent or unlawful purposes;
- not use the SmartEcho services to send spam, phishing, malware or other unauthorised forms of communication;
- prevent misuse of the services by taking adequate security measures.

Upon determination of misuse or unauthorised use, SmartEcho and its Backbone Providers reserve the right to immediately suspend the affected services temporarily or permanently.

12.2 Address changes and communication

The End Customer is responsible for:

- providing timely written notice of any change in its correspondence and billing details;
- keeping contact details up-to-date for operational, technical and billing-related communications.
- In case of failure to timely communicate changed data, communication to the last known address or e-mail address shall be deemed to have been validly received.

13 AMENDMENTS AND NULLITY

13.1 Amendments to the Terms and Conditions

SmartEcho reserves the right to amend or update these Terms and Conditions at any time due to:

- changed laws or regulations;
- technological developments;
- changing market conditions;
- internal operational or compliance requirements.

SmartEcho and/or Partner shall inform the End Customer of such changes in writing with a minimum period of fourteen (14) calendar days before their intended entry into force.

If the End Customer wishes to object to the proposed changes, this must be done in writing within the notification period. In the absence of timely written objection, the changes shall be deemed accepted.

In case of fundamental changes that have a material impact on the rights or obligations of the End Customer, the End Customer and Partner shall consult to discuss the changes jointly.

13.2 Nullity of provisions

If any provision of these General Terms and Conditions is declared invalid, illegal or unenforceable in whole or in part by a competent court or authority:

- the remaining provisions will remain in full force and effect;
- the parties undertake to replace the invalid provision with a legally valid provision that is as close as possible to the original intention of the parties.

If the nullity of a provision has such a substantial impact that performance of the agreement becomes unreasonably difficult, each party retains the right to terminate the agreement in whole or in part.

14 CONFIDENTIALITY - PRIVACY STATEMENT

14.1 Confidentiality

Each party undertakes to:

- use all confidential information received from the other party solely for the performance of the agreement;
- not disclose such confidential information to any third party without the prior written consent of the other party;
- take all reasonable measures to ensure confidentiality.

Confidential information includes, inter alia, technical data, commercial information, tariffs, customer data, know-how, software, infrastructure and other non-public information.

14.2 Exceptions to confidentiality

The obligation of confidentiality does not apply to information

- that is already publicly available without breach of this agreement;
- that was independently developed by the receiving Party without use of confidential information of the other Party;
- that was lawfully obtained from third parties not bound by a confidentiality obligation;
- that must be disclosed pursuant to a legal obligation, court judgment or order of a competent authority.

14.3 Processing of personal data

Personal data will be processed in accordance with applicable data protection legislation, including the General Data Protection Regulation (AVG/GDPR).

Each party acts as an independent data controller for the personal data it collects in the context of its own contractual relationship with the End Customer, unless otherwise agreed in separate processor agreements.

14.4 Purposes of processing

Personal data shall only be processed for the following purposes:

- execution and delivery of the agreed services;
- administration, invoicing and contract management;
- customer service and technical support;
- compliance with legal obligations;
- security and quality improvement of services.

Use of personal data for promotional purposes is only done with the prior consent of the data subject, if required by law.

14.5 Sharing of personal data

Personal data will only be shared:

- with subcontractors or service providers of SmartEcho to the extent necessary for the provision of services;
- subject to appropriate contractual safeguards (sub-processor agreements);
- not with third parties for commercial purposes without the explicit consent of the data subject.

14.6 Security of personal data

Both parties shall take appropriate technical and organisational measures to protect personal data against:

- unauthorised access;
- loss or destruction;
- modification or unauthorised disclosure.

Employees or appointees of the parties are contractually bound to confidentiality when accessing personal data.

14.7 Rights of data subjects

Each party respects the rights of data subjects under the AVG, including:

- right of access;
- right to rectification or deletion;
- right to restriction of processing;
- right to object;
- right to data portability.

Requests from data subjects are handled by the party acting as the data controller.

14.8 Data breach

If a data breach occurs at either party:

- the other party is informed immediately after becoming aware of it;
- there will be cooperation in carrying out notifications to regulators and data subjects, in accordance with the AVG;
- the relevant legal deadlines are strictly observed.

14.9 International transfer

Personal data will only be processed and stored within the European Economic Area (EEA), unless otherwise previously agreed in writing with the controller and provided with adequate protection measures.

15 APPLICABLE LAW AND COMPETENT COURTS

15.1 Applicable law

This agreement is exclusively governed by Belgian law, to the exclusion of the Vienna Sales Convention (CISG) and other international conflict of law provisions.

15.2 Competent courts

All disputes arising out of or in connection with this agreement are subject to the exclusive jurisdiction of the courts of the district of Antwerp, Belgium.