

**Provisions on Software and Database Use and Maintenance Terms
including Data Privacy Regulations**

between

**Radlabor GmbH,
Heinrich-von-Stephan-Str. 5c
D-79100 Freiburg**

- hereinafter Provider -

and the customer named in the quotation

- hereinafter Customer -



I. Software Licensing

Section 1 Subject matter

1.

The Provider is leasing its software products – hereinafter Application Software – and database packages where applicable to the Customer for the duration of this Agreement. The Application Software is protected by dongle.

The Application Software leased by the Customer and the data package are specified in detail and in scope (number of licences) in the confirmation of order. The confirmation of order is to that extent a constituent part of this Agreement. The necessary terms of use are finally regulated in the following provisions.

2.

The Application Software for Smartfit M1 will be supplied on a data carrier. A user manual and an installation manual will be supplied in addition to the data carrier. The software will be pre-installed on a computer supplied with all the Smartfit products with the exception of the M1.

The functional scope of the software application is set out in the user manual. The installation manual describes the system environment in which the software application may be used.

Section 2 Delivery, installation, support

1.

The Provider will supply the software including documentation to the Customer. The costs of the delivery are set out in the quotation and confirmation of order. The date of delivery is as specified on the delivery note.

2.

The Customer will install the software himself (Smartfit M1, additional dongle or software only). The software is pre-installed on the computer incorporated in the measuring system (all products except M1)

3.

The Provider only owes support services – insofar as these are not already covered by the maintenance services under Part III section 2 – if this is expressly and separately agreed.

4.

Adaptations and modifications to the Application Software and the creation of interfaces to third-party programs by the Provider are only owed if this is required in order to install or repair the leased item or to ensure that it can be used as specified in this Agreement. The Provider will otherwise only be bound to make adaptations or modifications if this is expressly agreed; the relevant services shall, where necessary, be remunerated separately by the Customer on reasonable and standard market terms.

Section 3 Rent

1.

The monthly rental payment for the Application Software specified in section 1 no. 1 is set out in the confirmation of order. The rent is exclusive of value-added tax at the prevailing rate. It

comprises the fee for the licensing and use and the maintenance of the Application Software. The licensing and use as well as the maintenance of the data packages contained in the software are included in the lease charge.

2.

The rent for the Application Software shall be paid monthly in advance by not later than the 5th working day of each month. The annual rent for the leased data packages will likewise be due for payment within 5 days of the start of the term of the Agreement (section 11) and will then be due for payment within 5 days of the end of each and every year of the Agreement. The Customer authorises the Provider to deduct the rent for the Application Software and the data packages plus the value-added tax by direct debit and shall ensure that there are sufficient funds in its bank account.

3.

The Provider shall have the right to increase the rent at the end of any month, but not before 24 months have elapsed since conclusion of the Agreement, by written notice given three months in advance if and to the extent that the costs it has incurred for maintenance of the rental item have increased. The Customer has the right to terminate the lease within a period of six weeks of receipt of notification of an increase in the rent.

Section 4 Rights to use the Application Software

1.

The Provider grants the Customer the simple and non-transferrable right to use the licensed program in the object code and the other components of the Application Software for the assumed contractual purpose in accordance with the following provisions and the provisions in § 5, 6 and 7 for the limited period of the duration of this Agreement.

2.

The Customer has the right to use the Application Software on one client (one computer). The Application Software is protected by dongle. If the Customer wishes to use the Application Software on several clients (computers), it must acquire Application Software (licences) from the Provider in the corresponding quantity. The Customer will be given the corresponding number of dongles. In the event of a hardware defect or other essential change of hardware the software may be installed on new hardware. If the Customer changes the hardware, he must delete the Application Software from the hardware previously used. Simultaneous saving, storage or use on more than one item of hardware is not permitted. Installation of the licensed Application Software within a network or other multi-station computer system is likewise not permitted, in particular if it thereby creates the possibility of the simultaneous multiple use of the program.

Section 5 Duplication of the Application Software

1.

The Customer has the right to duplicate the Application Software and the documentation if and insofar as this is necessary for proper use.

2.

The Customer has the right to create copies of the Application Software if this is required in order to safeguard the future use of the Application Software and for the purposes of data backups and archiving corresponding to the operational requirements of the Customer.



3.

The Customer shall inform the Provider on request of the number, storage medium and place of storage of the copies made.

4.

No duplication above and beyond this extent is permitted.

Section 6 Re-engineering of the program; decompilation

1.

The Customer may not carry out any re-engineering of the program unless this is essential for proper use. Re-engineering is permitted if it is necessary in order to rectify a defect and the Provider is in default of rectification of the defect or the Provider unjustifiably refuses to rectify the defect or is otherwise unable to rectify the defect at once for reasons within its control. Re-engineering is also permitted if it is required in order to resolve compatibility problems associated with the interaction of the program with other programs required by the Customer and the Provider is unwilling or unable to resolve these at a reasonable standard market rate.

2.

The decompilation of the licensed Application Software into other code forms and other forms of reverse engineering of the different production stages of the software are only permitted if they are undertaken in order to acquire the information required to establish the interoperability of an independently created computer program and this information cannot be obtained elsewhere. The Customer must first request the required information from the Provider against reimbursement of its expenses.

3.

It is a further prerequisite for consent to decompilation that the reverse engineering or program viewing is only performed through those acts which the Customer is entitled to perform under section 5 of this Agreement. In particular, the program code may not be output on a printer.

4.

Copyright notices, serial numbers and other features serving to identify the program may not under any circumstances be removed or modified. This applies analogously for a suppression of the screen display.

Section 7 Transfer of the Application Software to third parties

1.

The Customer is not entitled to transfer the Application Software to third parties, in particular to sell or lease it, without the consent of the Provider.

2.

Use by the employees of the Customer and other third parties subject to the right of instruction of the Customer is permitted within the scope of proper use.



Section 8 Notification and duties of care of the Customer

1.

The Customer shall report defects in the Application Software to the Provider at once. It shall in such cases follow to the extent that is reasonable the advice given by the Provider for analysing the problem and shall forward to the Provider all information required for rectifying the defect that is available to him.

2.

The Customer shall take suitable precautions to protect the Application Software and the dongle from unauthorised access by third parties. It shall keep the original data carriers and the data carriers with the copies made by it under the Agreement as well as the documentation in a secure place. It shall instruct its employees and the other persons with a right of independent use that the creation of copies beyond the extent allowed under the Agreement is not permitted.

Section 9 Rights of the Customer in the event of defects

1.

The Provider has a duty to rectify defects in the licensed Application Software including the documentation.

2.

Defects will be rectified by the Provider at its choice by free improvement or substitute delivery.

3.

Termination by the Customer on account of denial of use as specified in the Agreement is only permitted if the Provider has been given sufficient opportunity to rectify defects and this has failed. The rectification of defects shall only be assumed to have failed if it is impossible, if it is refused or unconscionably delayed by the Provider, if justified doubts with regard to the prospect of success exist or if other reasons make it unconscionable for the Customer.

4.

The Customer's rights in the event of defects are excluded if the Customer makes modifications to the rental item or causes such modifications to be made without the consent of the Provider, unless the Customer demonstrates that the modifications have no unconscionable effects for the Provider on the analysis and rectification of the defects. The Customer's rights in the event of defects will not be affected if the Customer is entitled to make modifications, particularly within the scope of its right to rectify defects on its own account, and these were done appropriately and documented verifiably.

Section 10 Limitations of liability

1.

The Provider will have unlimited liability for losses arising from the absence of warranted characteristics. The same applies for losses arising from loss of life, physical harm or damage to health arising from a negligent breach of duty by the Provider or a wilful or negligent breach of duty by a legal representative or vicarious agent of the Provider.

2.

Otherwise the Provider shall only be liable for intent and gross negligence, even of its legal representatives and senior executives, except if a duty is breached whose observance is of



particular importance for the achievement of the purpose of the Agreement (cardinal duty). The Provider shall only be liable for the culpability of other vicarious agents to the extent of its liability for the breach of cardinal duties.

3.

In the event of a breach of a cardinal duty the Provider shall also be liable for slight negligence. However, the liability shall be limited in terms of amount to 5 times the monthly rent and to those losses that must typically be expected to arise within the scope of a software lease.

4.

The liability for loss of data shall be limited to the typical costs of restoration that would have been incurred had backup copies been made regularly, having due regard for the risks.

5.

This does not affect liability under the German Product Liability Act (section 14 ProdHaftG).

Section 11 Term of the Agreement

1.

The lease shall commence on the delivery date and shall run for a term of 12 months. It shall be automatically extended by another 12 months unless terminated by one of the parties hereto at the end of the respective term, subject to a notice period of three months.

2.

This does not affect the Customer's rights of termination insofar as these are set out in these terms of use.

3.

This shall be without prejudice to the right of each party to cancel without notice for good cause.

4.

Notice of termination must be set out in writing in order to be effective.

Section 12 Return and duty of erasure

1.

Upon termination of the contractual relationship, the Customer shall be required to return all the dongle supplied. The dongle(s) must be delivered to the Provider free of charge. If transported by third parties, the consignment must be insured in transit with an appropriate level of cover amounting to at least 12 times the monthly lease charge.

2.

The due and proper return shall also include the complete and final deletion of any copies, where applicable.

3.

Instead of asking for the return of the dongle, the Provider may also ask for the erasure of the licensed program and the destruction of the documentation provided.

4.



The Customer is expressly advised that it may no longer use the Application Software after the termination of the contractual relationship and will be infringing the copyright of the relevant holder in the event of non-compliance.

5.

At the end of the contractual relationship, the Provider must hand over to the Customer all the data in the database which have come into its possession and have been generated in connection with the contractual relationship or, by prior agreement, destroy said data in accordance with data protection requirements. The same shall apply to any test and scrap material. The erasure log must be presented on request.

Section 13 Other agreements

1.

Any amendments or additions to this contract, the warranty of characteristics and any guarantees must always be set out in text form to be effective.

2.

The parties hereby agree that German law shall apply exclusively to all legal relations arising from this contractual relationship.

3.

If the customer is a trader as defined by the German Commercial Code (Handelsgesetzbuch - HGB) or a legal entity under public law, Freiburg im Breisgau is hereby agreed as the place of jurisdiction for all disputes which arise in the context of the execution of this contract.



II. Additional Terms for the Use of the Provided Database (applies for all database products)

Section 1 Provision of the database and storage space

1.

The Provider will make the database packages leased pursuant to I section 1 available for use in the latest version on one or more central data processing systems from the agreed date. The Customer accesses the database and the storage space provided by means of a telecommunications connection. The Customer is advised that parts of the data package will be stored on its local data carrier.

2.

The data stored by the Customer on the storage space provided will be backed up regularly, at least every calendar day. The storage space allocated to the Customer is protected against access by third parties. The Customer is responsible for compliance with retention periods.

3.

This contractual relationship does not cover the Customer's internet access. The Customer bears sole responsibility for the functional capacity of its internet access including means of transmission and its own PC. The Customer shall ensure that firewalls installed by the Customer do not prevent access to the database.

4.

The Provider will send the Customer the access details for identification and authentication purposes that are required for use of the database. Other system conditions are set out in the installation manual. The Customer is not permitted to allow third parties to use these access details.

5.

The Provider undertakes to take the necessary measures to keep the databases and the storage space provided free of viruses and similar impairments that could render them unfit for use as specified in the Agreement.

Section 2 Rights to use the database and storage space provided

1.

The Customer receives a simple right to use the database that is limited in time to the duration of the Agreement.

2.

The Customer may use the database only for the purpose assumed in the Agreement. Use of the database is tied to use of the Software Application pursuant to Part I. Use above and beyond this extent is not permitted.

3.

The Customer does not have the right to make changes to the database. The Customer likewise does not have the right to use the database beyond the agreed usage or allow it to be used by third parties or make it accessible to third parties. In particular, the duplication, sale or temporary transfer of the database, particularly its lending or leasing, is not permitted.

4.

The Customer shall take the necessary precautions to prevent use of the database by unauthorised persons.

5.

All data added by the Customer on the storage space provided belongs solely to the Customer.

Section 3 Data protection

1.

The Provider will only collect, process and use personal data that were stored by the Customer on the storage space provided and the other protectable data stored by the Customer in accordance with the relevant legal conditions that may apply.

2.

The Provider is answerable to the Customer for the duration of the Agreement for the confidentiality, availability and integrity of the data stored by the Customer on the storage space.

3.

Any communication of the designated data (whether personal data or non-personal data) to third parties will require the prior written consent of the Customer.

4.

If the Customer collects, processes or uses personal data, it shall be responsible for ensuring that it is entitled to do so under the applicable provisions, in particular data protection regulations, and shall in the event of infringement release the Provider from claims of third parties. The Customer is advised that the data stored and saved by it on the Provider's database is encrypted. These data can only be encrypted by the Customer on its local computer using the dongle assigned to this computer (client). The Customer is again expressly advised of the need to take measures to protect the dongle from unauthorised access by third parties.

5.

All the data will be primarily stored locally on the hard drive of the computer in the measuring system. A synchronisation service will run in the background of the program, synchronising all the data with our server and constantly updating the local database so as to enable recovery in the event of a loss of data from the Customer's hard drive. This allows the Customer to ensure access to the data in all its branches.

Otherwise the provisions of Part I shall apply.



III. Maintenance of the Software Application and the Database

Section 1 General

1. The Provider will maintain the Software Application designated under Part I. no. 1 and the provided database.
2. This Agreement does not cover the maintenance of computer hardware.

Section 2 Maintenance services

1. Maintenance comprises the following services:
 - The licensing of the latest program version of the Software Application mentioned under no. I section 1 and database updates.
 - The response time for the rectification of defects is no more than three working days.
 - Both written (e-mail: support@smartfit.bike) and telephone support for the Customer in the event of problems in respect of use of the software or database and in the event of any program errors that may occur. See also section 2 no. 2.
 - The telephone support (hotline) will be available to the Customer on weekdays between 09:00 and 16:00 (Central European time). No telephone support services will be available on statutory public holidays (statutory public holidays/special public holidays in Baden-Württemberg).
 - Faults reported in writing or requests for support will be answered within not more than three working days. Where possible, support will be provided by telephone to ensure speedier resolution. The Customer must therefore add the name and direct telephone number of the relevant employee with every written report. Fault reports and support requests made by e-mail may also be answered by e-mail.
2. The following services are not part of the contractual services provided by the Provider:
 - Support outside the above support times.
 - Advice on the general use and application of the software that can be obtained from the user manual. This includes questions on content such as adjusting the seating position, etc.
 - Maintenance services that are required because the software is installed on a hardware system not supplied by the Provider or on another operating system.
 - Maintenance services following interference by the Customer in the program code of the Software Application or the database.
 - Maintenance services in respect of the interaction of the contractual software with other computer programs or external hardware which are not covered by the maintenance contract.

Section 3 Term of the Agreement

The agreed maintenance services will begin on the commencement date agreed under Part I. and will end at the end of the lease pursuant to Part I.





Section 4 Customer's duties of collaboration

1.

The Customer must follow the advice given by the Provider for the description, limiting, definition and reporting of faults. The Customer may need to use checklists supplied by the Provider.

2.

The Customer must be as precise as possible when reporting faults and raising questions.

3.

The Customer must be present in person during any necessary test runs or provide competent staff who are authorised to assess and decide on defects, the extension or restriction of functionality and modifications to the program structure.

3.

The Customer shall grant the Provider telecommunications access to the Software Applications. The Customer shall establish the necessary connections according to the Provider's instructions.

Section 5 Liability

1.

The Provider shall have unlimited liability only for intent and gross negligence, including that of its legal representatives and senior executives. Liability for the culpability of other vicarious agents shall be limited to 5 times the annual rent and to those losses that must typically be expected to arise within the scope of maintenance.

2.

The Provider shall only be liable for slight negligence if a duty is breached whose observance is of particular importance for the purpose of the Agreement – such as maintenance – (cardinal duty). In the event of a breach of a cardinal duty the limitation of liability under para. 1 of this liability clause shall apply accordingly.

3.

The liability for loss of data shall be limited to the typical costs of restoration that would have been incurred had backup copies been made regularly, having due regard for the risks.

Freiburg, Germany
01 January 2022