

# Terms and Conditions of Services

(the "Terms and Conditions")

## Definitions

The expressions set forth below, whether in the plural or singular, shall have the meaning specified next to each of them:

- **"Smartness Account"**: means the account for accessing the Smartness Services and Smartness Software, consisting of a username and password, created by the User or provided to the User by the Supplier during the execution of the Contract.
- **"Activation of Services"**: means the moment when the Supplier, upon completion of the Onboarding phase, confirms to the User, including through the Smartness Platform, the operability of the Smartness Services and Smartness Software purchased.
- **"Contract"**: means the contract entered into between the Supplier and the User for the provision of Smartness Services and the granting of a sub-license to use the Smartness Software, consisting of these Terms and Conditions, the purchase order completed by the User through the shopping cart available on the Smartness Platform, the Privacy Policy relating to each Smartness Service and/or Smartness Software purchased, as well as any other document or special conditions related to the products and/or services purchased that the User has accepted by checking the relevant section on the Smartness Platform, all of which together form an integral and substantial part of the Contract.
- **"Control"**: has the meaning set forth in Article 2359, paragraphs 1 and 2, of the Italian Civil Code; the verb **"to Control"** or the terms **"Controlling"** and **"Controlled"** shall be interpreted consistently with this definition.
- **"Damages"**: any and all damages pursuant to Article 1223 of the Italian Civil Code (including, without limitation, reasonable legal assistance expenses, as well as disbursements, costs and expenses for technical consultants and investigative activities).
- **"Personal Data"**: to be interpreted in accordance with applicable legislation on Personal Data Protection, includes, by way of example only, all data provided, stored, sent, received or otherwise processed, or created by Users, to the extent that they are processed by the Smartness Group, on the basis of the Contract.
- **"IP Rights"**: means any and all intellectual property rights – registered, pending or unregistered – including any related rights, goodwill, title and interest, existing in any jurisdiction, in (i) patents for invention and utility models; (ii) trademarks, trade names, signs, company names, shape marks, domain names and URLs and any other distinctive sign; (iii) designs and models; (iv) new plant varieties; (v) topographies of semiconductor products; (vi) copyrights (including copyrights on formats, computer programs, such as Smartness Software), related rights and sui generis rights (including those on databases); (vii) trade secrets and/or know-how (for example on non-patented inventions, formulas, commercial information and any other Confidential Information); and (viii) any other right or equivalent form of protection in any part of the world.

- **"Smartness Group"**: means, jointly, Helium and any other company Controlled (including indirectly) by Helium, or subject to common Control with, or Controlling, Helium itself.
- **"Helium" or "Supplier"**: means **Helium S.r.l.**, with registered office at 38068 Rovereto (TN), Via Parteli n. 19, REA TN - 234757, tax code and VAT number 02576010223, certified email address: [helium@pec.it](mailto:helium@pec.it).
- **"Input"**: the data processed by the Client through the use of the Smartness Software or the AI Systems connected to the use of the Smartness Software.
- **"Guests"**: means the guests of the Properties.
- **"Output"**: the predictions, content, recommendations and/or reports generated by the Smartness Software or by third-party AI Systems connected to the use of the Smartness Software.
- **"Smartness Platform"**: means the software platform hosting the Smartness Services and Smartness Software purchased pursuant to the Contract, and containing a personal area accessible through the Smartness Account.
- **"PMS"**: means the booking management system in use at the Properties.
- **"Third-Party Services"**: any and all hardware, servers, software, facilities and/or IT architecture, premises or activities of third parties, including third-party AI Systems, the use of which has been integrated or otherwise connected to the operation of the Smartness Software and/or Smartness Services.
- **"Smartness Services"**: means the services purchased pursuant to the Contract that are offered by the Smartness Group also through the Smartness Software, and/or any other service provided by the Smartness Group to the User under the Contract, including all necessary and/or otherwise dependent and/or related activities.
- **"AI System(s)"**: an automated system designed to operate with varying levels of autonomy and which may exhibit adaptability after deployment and which, for explicit or implicit objectives, infers from the Input it receives how to generate Output such as predictions, content, recommendations or decisions that may influence physical or virtual environments.
- **"Smartness Software"**: the computer programs purchased pursuant to the Contract, in executable object format, in the version in use at the date of execution of the Contract and any component, patch and update released on the market by the Smartness Group companies, even if distributed under trademarks other than "Smartness" and/or "Smartpricing" - thus excluding developments, customizations and other modifications commissioned by individual clients - during the term of the Contract.
- **"Property"**: means the accommodation and/or organizational facility, consisting of one or more Units, at which the User has performed the Activation of Services.
- **"Units"**: means rooms and/or apartments and/or otherwise bookable units of which the Property is composed.
- **"Users"**: means the persons, natural and/or legal, acting in the exercise of business activity, including as owners of a Property and/or managers of a Property and/or authorized persons with appropriate powers for the management of the Property, who enter into the Contract and/or use the Smartness Services and/or Smartness Software on behalf of the persons entering into the Contract.

## 1. Applicability

- 1.1 These Terms and Conditions govern the access to and use of the Smartness Services and Smartness Software by Users, as well as the methods of performance and provision thereof by the Smartness Group. It is understood that the Terms and Conditions shall remain effective until expressly updated and/or supplemented and/or replaced or otherwise modified by the Smartness Group by means of a written document. Such modifications may be made by the Smartness Group at any time by notifying the User through publication on the Smartness Platform.
- 1.2 Before proceeding with payment and concluding the Contract, the User declares to have read and fully accepted these Terms and Conditions as well as the privacy policy on the processing of personal data by checking and completing the relevant checkboxes.
- 1.3 The application of any special conditions agreed between the Supplier and the User is reserved. These Terms and Conditions therefore apply unless expressly derogated by the Parties in writing.
- 1.4 The Smartness Software is made available to the Client by the Supplier remotely via telematic connection (*so-called "Software as a Service" mode*).
- 1.5 In the event of changes in applicable law that require radical changes to the Smartness Software and/or Smartness Services and/or that make the maintenance, updating and/or adaptation of the Smartness Software excessively burdensome, the Supplier reserves the right to replace the Smartness Software and/or Smartness Services with other software and/or services that include the same functionalities or, alternatively, to withdraw from the Contract with 30 (thirty) days' notice.

## 2 Characteristics of the Services

- 2.1 The use of the Smartness Services as well as access to the related content is reserved to the User (including related employees and collaborators acting on the User's authorization). By concluding the Contract, the User therefore declares, under its sole responsibility, to be the owner of and/or manager of and/or authorized person with appropriate powers for the management of the Property. The User declares and warrants not to be classifiable as a consumer and to be acting within the scope of its own business and/or commercial and/or artisanal and/or professional activity, releasing the Smartness Group from any liability in this regard.
- 2.2 Each license of use granted by the Smartness Group under the Contract shall be understood as non-exclusive, non-transferable and without the right of sublicense.
- 2.3 Helium and the Smartness Group have the right to release new versions and/or updates of the Smartness Services and Smartness Software as well as to modify at their discretion the characteristics of the Smartness Services and Smartness Software in order to, by way of example and not limitation, improve performance, implement new integrations and/or optimize the user experience for Users.
- 2.4 The User acknowledges and accepts that the Smartness Services and Smartness Software are offered according to differentiated subscription plans (such as, by way of example and not limitation, "Premium" and "Ultra" plans), each of which may provide for different functionalities, technical characteristics and performance. The composition of services, available functionalities and performance vary according to the subscription plan chosen by the User at the time of execution of the Contract. The User acknowledges that access to certain advanced functionalities and/or additional services may be subject to the subscription of specific higher-level subscription plans.
- 2.5 The User acknowledges and accepts that certain functionalities and/or services ("**Additional Services**") are available exclusively within specific subscription formulas called "Premium" or "Ultra", to be understood as supplementary plans with respect to the basic plan of the relevant Smartness Service and/or Smartness Software. Such Additional Services are therefore not accessible to Users who have subscribed only to

the basic plan and their use is subject to the subscription of the corresponding "Premium" or "Ultra" plan according to the methods and fees indicated on the Smartness Platform at the time of order completion.

- 2.6 The User acknowledges and accepts that access to and use of the Additional Services may require the subscription and acceptance of additional and/or specific contractual terms and conditions. Such supplementary terms and conditions shall be in addition to these Terms and Conditions and shall be communicated to the User before the activation of the relevant Additional Service requested. The use of such Additional Services shall be subject to the express acceptance by the User of the relevant supplementary and specific terms and conditions.
- 2.7 The User acknowledges that any automated responses obtained through the Smartness Services and Smartness Software may be generated, in whole or in part, using state-of-the-art tools and in particular through artificial intelligence systems that formulate responses based on the Property's knowledge base, conversation history and pre-loaded templates. It is understood that the User is solely responsible for the templates uploaded and/or modified by the User.  
The User acknowledges and accepts that the content generated by artificial intelligence may not always be up-to-date, complete and/or error-free and the User releases Helium from any liability in this regard.
- 2.8 The User is solely responsible for the content of any message and/or communication sent through the Smartness Software and for the accuracy of the information provided to Guests and/or third parties.
- 2.9 The User acknowledges and accepts that certain Smartness Services and/or Smartness Software may require integration or joint use with additional and complementary Smartness Services and/or Smartness Software to ensure the full operation of the relevant functionalities and/or performance. In the absence of such integrations or joint uses, the functionalities and/or performance of a product or service may be limited or not fully operational, even if described as available for that specific product or service and, in relation to this circumstance, the Smartness Group cannot be held liable.
- 2.10 The User also acknowledges and accepts that, even where technical compatibility exists between the Smartness Services and/or Smartness Software and third-party products or services in use by the User, the Smartness Group reserves the right to apply additional costs for the implementation and management of such integrations with Third-Party Services.

## **2.11 Onboarding**

- 2.11.1 Following the execution of the Contract, the Supplier initiates the onboarding phase, which consists of the set of preliminary, technical and operational activities necessary to configure and integrate the User's systems such as, by way of example and not limitation, booking management systems in use (PMS or Channel Manager), with the Smartness Platform and to make the Smartness Services and Smartness Software technically usable by the User ("**Onboarding**").
- 2.11.2 The Activation of Services occurs upon completion of the Onboarding phase.
- 2.11.3 The User acknowledges that, in many cases, depending on the type and configuration of pre-existing systems at the Properties, the active collaboration of the User may be necessary for the Onboarding activity to be completed successfully.
- 2.11.4 The User acknowledges and accepts that, once the initial Onboarding is completed, variations in the Service configuration involving the replacement or change of the PMS and/or Channel Manager of third parties connected to the Smartness Group products, where they require the intervention of the Smartness Group for implementation, configuration or integration activities, shall be subject to a charge of € 150.00 (one hundred fifty/00) plus VAT for each variation requested.
- 2.12 The description of the Smartness Services and Smartness Software and their main characteristics and functionalities is set forth below. It is understood that only the

Smartness Services and/or Smartness Software actually purchased by the User by completing the purchase order through the shopping cart available on the Smartness Platform constitute the subject of the Contract and are therefore applicable to the User.

## Smartpricing

### Revenue Management Suite

Smartpricing is a dynamic pricing solution for accommodation facilities. It automatically adjusts room rates based on demand, local events, market occupancy and booking trends.

#### Main features:

- **Integrated market intelligence and competitor benchmarking;**
- **Customizable pricing strategies** (rate limits, stay restrictions, price aggressiveness level);
- **Seamless integration** with major PMS and channel managers;
- **Clear performance** monitoring (ADR, RevPAR, occupancy).

The Smartpricing basic plan may be completed with Additional Services to be selected based on the commercial offer available from time to time on the Smartness Platform. Additional Services may include Customer Success Plan, Revenue Manager Plan, and others. For the integration of Additional Services, the provisions of Article 2 of these Terms and Conditions shall apply.

Smartpricing is based on data extracted from the main online hotel booking platforms. The User therefore acknowledges and accepts that the Supplier is not responsible for the accuracy and/or reliability of the data extracted from online booking platforms.

The User may use Smartpricing by obtaining a license of use in the form of "Software-as-a-Service" (SaaS) by subscribing to a subscription with flexible plans agreed with the Supplier and according to these Terms and Conditions.

## Revenue Manager Plan

**The Revenue Manager Plan** Service is an Additional Service of the Smartpricing product and integrates the **Smartpricing** platform with **personalized strategic consulting**.

The objective is to **maximize the revenues** of accommodation facilities through a combined approach of technology and human expertise. The Service includes the following activities:

- **Dedicated Revenue Management Consulting Service:** dedicated support through a figure identified by the Smartness Group with the role of "Revenue Manager" to manage the User's pricing strategy;
- **"Turnkey"** Service: complete management of operational and strategic activities related to the configuration and optimization of the Smartpricing platform, with constant monitoring of KPIs (ADR, RevPAR, occupancy) and adaptation of pricing rules;
- **Advanced reporting:** *preparation of graphs and detailed analyses for the evaluation of the performance* of the User's Properties connected to Smartness Software in use at the Property;
- **Analysis and configuration of new channels** (such as OTA, TO, GDS) with expansion and optimization of online distribution channels.

Includes up to 4 monthly meetings between the Revenue Manager and the User on agreed dates, also possibly through remote communication platforms at the sole discretion of the Smartness Group.

To allow the correct execution of the service, the User undertakes to collaborate and to provide the Smartness Group with all requested and/or necessary information and, by way of example and not limitation:

- participate in scheduled meetings with the Revenue Manager;
- actively participate in the definition of strategies;
- allow access to the PMS and/or other software used at the Properties connected to the Smartness Software. ATTENTION: In the case of non-cloud PMS that do not allow actions by the Revenue Manager, some of their interventions will be limited or not deliverable

The User undertakes to make personal and appropriate use of all tools made available and/or strategies developed by the Smartness Group in the execution of the Smartness Services as well as not to assign, transfer or disclose them to third parties.

The User undertakes not to copy and/or reproduce and/or assign and/or otherwise make available to third parties, by way of example and not limitation, materials and anything else provided by the Smartness Group, possibly through the Revenue Manager, in execution of the Contract.

For communications with the Revenue Manager for updates regarding the Smartness Services, the Supplier reserves the right to activate a dedicated chat and/or email address. The Revenue Manager may be contacted from Monday to Friday from 9:00 a.m. to 6:00 p.m.

In any case, the Smartness Group is not liable even where the User does not adopt the pricing strategies and/or corrective actions identified in the execution of the Contract.

## **SmartConnect**

**Smartconnect is a CRM and Marketing Automation** Software designed for accommodation facilities (hotels, B&Bs, vacation rentals).

It manages guest interactions from booking to post-stay, promotes loyalty and increases direct revenues.

### **Main features:**

- **Email marketing and guest segmentation**
- **Campaign performance analysis and monitoring**

The SmartConnect basic plan may be completed with Additional Services to be selected based on the commercial offer available from time to time on the Smartness Platform. For the integration of Additional Services, the provisions of Article 2 of these Terms and Conditions shall apply.

The User may use Smartconnect by obtaining a license of use in the form of "Software-as-a-Service" (SaaS) by subscribing to a subscription with flexible plans agreed with the Supplier and according to these Terms and Conditions.

The User acknowledges and accepts that, for access to and use of Additional Services and/or advanced functionalities offered by the Smartness Group, the subscription and acceptance of additional and/or specific contractual terms and conditions may be required. Such additional terms and conditions shall supplement these Terms and Conditions and shall be communicated to the User before the activation of the Additional Service requested. The use of such Additional Services shall be subject to the express acceptance by the User of the relevant specific terms and conditions.

It is understood that the Supplier is extraneous to the relationship between the User and the Guest and/or affiliated partners providing additional services and/or third parties, the User therefore undertaking to fulfill any legal obligation in the use of Smartconnect. It is understood that the Supplier reserves the right to suspend and/or block access to the Smartness Services in the event of violation of said obligations by the User.

## SmartChat

**SmartChat** is an Artificial Intelligence-based *guest messaging* platform. Smartchat automates guest communication across multiple channels (WhatsApp, Airbnb, Booking.com, email).

### Main features:

- **Unified inbox** for all guest messages
- **AI agent trained on the property's knowledge base** for automatic responses
- **Management of FAQs, booking questions and general requests**
- **Ticketing and task management directly from the chat**

The SmartChat basic plan may be completed with Additional Services to be selected based on the commercial offer available from time to time on the Smartness Platform. For the integration of Additional Services, the provisions of Article 2 of these Terms and Conditions shall apply.

It is understood that for the full functionality of SmartChat, a WhatsApp Business number is required, at the User's sole expense. The User therefore undertakes to provide the Smartness Group with access and/or authorization for its use or equivalent APIs, with portability of the telephone number or consent to the activation of a new telephone number, as well as access and/or credentials to allow integration with Booking.com and/or other channels (if and when available) such as, by way of example and not limitation, email.

The User acknowledges and accepts that the integration of the interface made available by the Smartness Group through SmartChat with the User's communication channels attributable to WhatsApp and Booking.com, as well as with any additional communication channels that may be integrated by the Smartness Group into the SmartChat platform in the future, will be carried out through Third-Party Services made available by the Smartness Group. Reference is made to the following Article 6 for further details regarding the use of Third-Party Services.

## Guest Communication Management Plan

The Guest Communication Management Plan is an Additional Service of the Smartchat product and integrates the Smartchat platform with an operational management and human supervision service for incoming guest communications.

The objective of the Service is to ensure efficient, continuous and structured management of guest requests through a combined approach of Smartchat technology and dedicated human expertise, reducing the operational burden on the Property and improving the quality of service offered to guests.

The Service is operational every day, including weekends and holidays, from 8:30 a.m. to 10:00 p.m. (unless otherwise expressed by the client regarding shorter hours or availability), and includes the following activities:

- Management of incoming guest communications: handling, management and response to requests received through messaging and telephone channels supported by Smartchat;
- Autonomous management of recurring, operational and urgent requests, where possible, based on the information, policies and procedures provided by the Property and/or defined jointly;
- Specialized human support: direct intervention by dedicated Smartness Group operators for the management of conversations that require evaluation, context and human decision within the shared policies;
- Structured escalation to the Property, where the guest's request requires physical interventions, operations on external systems or authorizations not available to the Smartness Group, with sharing of priority and complete context;

The Service is limited exclusively to the management of incoming guest requests and does not include proactive communication activities towards guests (such as payment reminders, check-in completion requests or direct operations on management systems (PMS) external to the Smartness Group or the Property's accounting systems).

The Smartness Group will operate on the basis of the information, policies, operational instructions and procedures provided by the Property and/or defined jointly, which may be communicated to guests and applied autonomously by the Smartchat team in the execution of the Service.

In any case, the Smartness Group cannot be held liable for the outcomes, direct or indirect, of the activities, communications and actions carried out within the scope of the Service, even if performed directly by its team, as they are carried out on the basis of the information, instructions, procedures and operational limitations provided or agreed with the Property.

## **Smartsite**

**Smartsite** offers modern, conversion-oriented websites for B&Bs, guesthouses, property managers and hotels.

**With reference to the Smartsite service, the User acknowledges and accepts that the**

**scope, functionalities and level of services provided vary according to the subscribed commercial plan:**

- **Standard:** from 1 to 3 pages, template-based, for small properties.
- **Premium:** from 2 to 6 pages, template with customized options and professional design.
- **Ultra:** fully customized, includes professional photos/videos, advanced tracking and widget integration

## **Smartpaying**

**Digital platform for payments and marketplace.**

**Smartpaying** simplifies digital payments and service management for accommodation facilities.

- Enables secure and remote payments (integrated with Stripe)
- Automates reconciliation of transfers and payments
- Offers a dedicated marketplace for guests for upselling services and activities
- SCA (Strong Customer Authentication) for compliance and security
- Communication tools for automated email and WhatsApp messages

## **SmartADS**

The SmartADS service consists of a digital advertising service, integrated into the Smartness ecosystem, aimed at planning, managing and optimizing online advertising campaigns for accommodation facilities, with particular focus on disintermediation and increasing direct bookings.

The service includes, within the limits of the subscribed commercial plan:

- the configuration and launch of targeted digital advertising campaigns;
- continuous campaign optimization and performance monitoring;
- the definition and management of the agreed advertising budget;
- the setup and management of campaign tracking systems.

### **Service Levels**

With reference to the SmartADS service, the User acknowledges and accepts that the operational scope, functionalities and level of services provided vary according to the subscribed commercial plan, as specified below:

- **Standard Plan:** activation and management of campaigns on the Google Ads platform, up to a maximum advertising budget of Euro 8,000.
- **Premium Plan:** activation and management of campaigns on the Google Ads platform, up to a maximum advertising budget of Euro 20,000. Any activation of campaigns on the Meta Ads platform is at the sole discretion of Smartness.

- Ultra Plan: activation and management of campaigns on the Google Ads and Meta Ads platforms, up to a maximum advertising budget of Euro 30,000.

### **Exclusions from the Service**

The Client acknowledges and accepts that Smartness personnel perform exclusively activities directly connected to the configuration, management, monitoring and optimization of the advertising campaigns provided by the SmartADS service.

The following are therefore expressly excluded from the service, by way of example and not limitation:

- a) the creation or drafting of textual content, complex advertising copy or landing pages;
- b) the production, modification or management of graphic, visual or multimedia materials;
- c) the management of communications, contacts or relationships with the Client's end customers;
- d) any activity not directly connected to the operational management of Google Ads and/or Meta Ads campaigns.

### **Advertising Budget and Invoicing**

For the purpose of publishing advertising campaigns, the Client is required to provide a valid credit card, to be entered directly into the Google Ads and/or Meta Ads accounts for the charging of the advertising budget.

The Client acknowledges and accepts that:

- the invoicing and charging of amounts relating to the advertising budget occur exclusively between the Client and the Google and Meta platforms;
- Smartness assumes no liability in relation to charges made by the aforementioned platforms, nor to the management of the related invoicing.

## Premium Customer Success Service

The **Premium Customer Success Service** is an **advanced support and consulting service offered** by Smartness for accommodation facilities using the Smartness Group Software and includes:

**Consultation Session with Expert:** **monthly** sessions, conducted via web meeting between a Smartness Group expert and the User, during which **training activities and evaluation of the correctness of use and level of product adoption by the User are carried out**, as well as the formulation of personalized suggestions aimed at supporting the User in maximizing the return on investment of the Smartness Group products.

The Service is reserved for Users who purchase a Premium subscription plan of the Smartness Software. The service does not include the configuration of tools and/or Third-Party Services such as, by way of example and not limitation, PMS and/or Channel Manager or sales channels (such as, by way of example and not limitation, Booking engine, OTAs). Any suggestions provided by the Smartness Group to optimize such aspects do not imply any obligation on the parties for implementation, which the User may carry out independently or by requesting the Revenue Manager Plan service from the Supplier, subject to agreement with the Supplier itself.

## SmartPMS

### Unified Property Management System

SmartPMS is the **Property Management System (PMS)** Software and consists of a cloud-based booking management system dedicated to Properties.

- **Centralizes bookings, calendar, guest check-in and operations**
- Includes **integrated channel manager** and booking engine
- Payment automation and reconciliation
- Scalable for **multi-property and group management**

The User may use SmartPMS by obtaining a license of use in the form of "Software-as-a-Service" (SaaS) by subscribing to a subscription plan with different formulas agreed with the Supplier and according to these Terms and Conditions.

The User acknowledges and accepts that SmartPMS allows connection with software integrations developed by third parties. Such integrations are not included in the license granted by the Supplier under the Contract and are governed exclusively by the terms and conditions of the respective suppliers, excluding any liability of the Smartness Group in this regard. The Smartness Group is in no way required to verify the content and/or operation of third-party software integrations. The User also acknowledges that, to connect such integrations to SmartPMS, the Supplier may need access to SmartPMS via API, in order to acquire the necessary information. To this end, the User is required to provide access credentials to the integration supplier, authorizing the same as well as the Smartness Group to use the data contained in SmartPMS and to perform all operations necessary for the connection. It is understood that the entire responsibility for the integration between the third-party software and SmartPMS rests exclusively with the User and the relevant supplier. The Smartness Group is also released from any obligation to verify the compatibility between the software integration and SmartPMS.

## **SmartPAY**

### **Integrated Payment Automation for Hospitality**

#### **SmartPAY automates the entire payment lifecycle for hotels, B&Bs and vacation rentals.**

It manages charges, reminders, security deposits, virtual cards and reconciliations directly within the PMS, reducing manual work, errors and revenue losses.

#### **Main functionalities:**

- Automated payments based on refundability rules, deposits, balances and check-in/check-out timing
- Immediate or scheduled charges for direct bookings, OTA and booking engine
- Automatic management of virtual cards and retries on expired cards or failed transactions
- Integrated payment flows via link with SCA/3DS compliance
- Unified dashboard for monitoring, reconciliation and audit of all transactions

**SmartPAY** ensures consistent, compliant and fully automated payment collection across every channel, eliminating the need for external tools and manual processes.

It is a technical solution for managing online payments through a third-party payment gateway, chosen at the Supplier's discretion. The User, to use this functionality, is required to create an account with the payment gateway and undertakes to accept the related terms of use. The Supplier retains a commission on the total amount collected by the User for each transaction. The remaining portion of the amount will be automatically credited to the User's account. The Supplier will issue a regular invoice for the commission retained. Payments received by the User through the payment gateway may be made in different currencies. In such cases, the amounts will be automatically converted by the payment gateway according to the exchange rate applied by the platform at the time of the transaction. It is understood that the Supplier is extraneous to any relationship maintained by the User with third parties, such as guests of the Properties and/or other persons, limiting itself to making available to the User the infrastructure for managing online payments. Therefore, the Supplier does not handle the management of any disputes, refunds or other controversies with such persons connected to the use of the payment gateway, which remain the sole competence and responsibility of the User.

SmartPAY is a Software that can be integrated into the Smartness suite based on the Smartness Group's commercial offer available from time to time.

### **3. Technical Phases and Methods of Conclusion of the Contract**

3.1 The User will be directed to the shopping cart on the Smartness Platform via a specific link transmitted by the Supplier. At this link, the User will have access to a pre-filled screen by the Supplier based on the data communicated by the User, which will indicate the summary of the Smartness Services and Smartness Software being purchased, the subscription plan chosen for their use, the related price and future charges. For any request to change the Smartness Services and Smartness Software indicated in the cart, the User is invited to contact the relevant sales representative. On the pre-filled screen, the User may view any discount codes. By pressing "Proceed to checkout" the User will be required to fill in the mandatory fields for sending the order including, by way of example and not limitation, their personal data, contact details and billing data as well as any other field possibly present on the screens. The User also undertakes to provide

truthful, complete and current data, remaining solely responsible for the data entered.

- 3.2 Before making payment, the User is required to carefully read the Terms and Conditions, which form an integral part of the Contract, as well as the privacy policy on the processing of personal data, and fully accept their content. By pressing the "Subscribe" button, the User will submit the order to the Supplier. The submission of the order implies the payment obligation by the User. Upon receipt of payment by the Supplier, the User will receive an email confirming the execution of the Contract, which will contain a summary of the Terms and Conditions and any applicable special conditions, information relating to the essential characteristics of the Smartness Services and/or Smartness Software, detailed indication of the price, payment methods, duration of the Contract and timing of fee payments, any additional costs as well as a summary of the User's data.
- 3.3 Upon sending the confirmation email of the subscription by the Supplier, the Contract shall be deemed concluded.

## **4. Consideration**

- 4.1 For the Smartness Services and Smartness Software, the User undertakes to pay the amounts indicated in the cart during the order completion phase, according to the terms and conditions indicated therein. In the case of Smartness Services and Smartness Software for which recurring fees are provided, the User undertakes to pay the consideration at the deadlines indicated in the "future charges" section.
- 4.2 The User may be required, before the commencement of Onboarding activities, during the order completion phase and simultaneously with the execution of the Contract, to pay in advance part of the total consideration due. Reference is made to the following Article 7 for further details.
- 4.3 The User acknowledges and accepts that the consideration for the Smartness Services and Smartness Software varies based on the parameters indicated in the cart, through the Smartness Platform, including, by way of example and not limitation, the number of bookable Units at the Property. It is therefore understood that any variation in the type and/or number of Units will result in a variation of the consideration that will be quantified by the Supplier, as well as may result in variations to the Smartness Software Services and Smartness.
- 4.4 The User acknowledges and accepts that the Supplier reserves the right to update, upward or downward, at least once a year the consideration due by the User for the Smartness Services and Smartness Software. For variations in consideration, upward or downward, not exceeding 20% (twenty percent) of the current consideration, the Supplier is not required to communicate such updates to the User in advance, nor shall the User have the right to withdraw from the Contract by reason of such variations or the sending or non-sending of the related advance notice. Such consideration updates will be published on the Supplier's website and shall be deemed effective from the moment of their publication, unless otherwise indicated by the Supplier. For variations in consideration, upward or downward, exceeding 20% (twenty percent) of the current consideration, the Supplier shall communicate such updates to the User in writing with at least 10 (ten) calendar days' notice prior to their entry into force. Within such term, the User shall have the right to withdraw from the Contract by written notice to the Supplier. Upon expiry of the aforementioned term without the User having exercised the right of withdrawal, the variations shall be deemed definitively accepted and the User shall have no right to withdraw from the Contract by reason of such variations, without prejudice to the further withdrawal hypotheses provided for in this Contract. It is expressly understood that "current consideration" means the last consideration applied, as possibly already updated from time to time pursuant to the Terms and Conditions in force from time to time.

- 4.5 If, during the execution of the Contract, there is an increase or decrease in the number of Units available for sale and/or the number of Properties compared to what was indicated in the cart at the time of order completion through the Smartness Platform, the Client undertakes to promptly notify the Supplier - by sending an email to the email address [support@smartness.com](mailto:support@smartness.com) or to the different address indicated by the Supplier or by opening a support ticket through the chat available on the Smartness Platform.
- 4.6 The Supplier, consequently, may revise, within 30 days of the increase and/or decrease in the number of Units and/or the number of Properties, the Consideration and the Smartness Services and/or Smartness Software provided for in this Contract, in order to adapt them to the new operational dimensions of the Property(ies).
- 4.7 Without prejudice to what is otherwise provided in this Contract, the Supplier reserves the right to suspend access to the Smartness Services and Smartness Software by the User in the event of delay in payment of the Consideration exceeding 45 calendar days. The Supplier also reserves the right to modify the payment terms and conditions originally indicated in the cart by means of a notice available on the Smartness Platform.
- 4.8 Pursuant to Article 1462 of the Italian Civil Code, until full payment of all amounts due to the Smartness Group, the User has no right to raise any objection and/or exception in order to suspend or delay payment; in particular, but without limitation, the User has no right to raise the exceptions referred to in Articles 1460 and 1461 of the Italian Civil Code, or exceptions based on any objection and/or counterclaim by the User against the Supplier and the Smartness Group.
- 4.9 The Supplier is granted, pursuant to Article 1252 of the Italian Civil Code, the right to set off any amount possibly owed by the same to the User against any sum and/or amount owed by the User to the Supplier and/or the Smartness Group. It is understood that all amounts that have not been set off pursuant to this Article shall be paid in cash within the contractually provided terms.

### **Smartpricing; SmartPMS; Smartconnect**

The consideration is determined based on the number of bookable Units contracted at the time of subscription of the commercial offer. In the event of an increase in the number of bookable Units compared to those initially provided, the fee will be recalculated upward according to the current price list.

In the event of a reduction in the number of bookable Units, the fee will not undergo any variation if the number of Units is equal to or less than 10. Above this threshold, the fee will be recalculated only if the reduction results in a transition to a lower tariff band.

The User may vary the number of Units associated with the Smartness Services and/or Smartness Software. If provided, the consideration will be updated every 30 days based on the Units associated in the previous 30 days and will be valid for the following 30 days. In the case of annual consideration, the consideration will be subject to an annual adjustment based on the number of Units associated during the term of the Contract.

### **Smartpay**

#### **Fee**

The User acknowledges and accepts that for each payment made by the Guest through the SmartPAY Service, a variable rate consideration is due to the Supplier, based on the payment method chosen by the Guest to make the payment. This amount, as specified below, inclusive of the fee charged by the payment infrastructure to the Smartness Group (STRIPE or other provider identified by the Supplier), will be invoiced by the Supplier to the

User with the latter's obligation to pay it to the Supplier together with the consideration for the Smartness Services and Smartness Software.

<b>PAYMENT METHODS AVAILABLE ON SMARTCONNECT</b>	
<b>Credit / Debit Card (For European Economic Area cards)</b>	
For European Economic Area cards	1.6% plus VAT as required by law on each transaction
For international cards	3.2% plus VAT as required by law on each transaction
<b>Payment via Wallet</b>	
For European Economic Area cards	1.6% plus VAT as required by law on each transaction
For international cards	3.2% plus VAT as required by law on each transaction

#### **Commissions**

For each additional service offered by affiliated partners and purchased by Guests through the SmartPAY Service, the Supplier will recognize to the User a commission equal to 4% plus VAT for each transaction (the "**Commission**"). The Commissions due to the User will be calculated by Helium in each calendar month and paid by the same the following month, upon the occurrence of the following conditions:

- the purchase is completed with related payment through SmartPAY;
- the Commissions accrued in each calendar month are in an amount exceeding €30 plus VAT. In the event that the Commissions accrued in the calendar month are below the minimum threshold, they will be accumulated with those of the following period until the minimum threshold is reached;
- a regular invoice has been previously issued by the User based on the data communicated by Helium.

It is understood that the Commission is due only in the case of sale of additional services offered by affiliated partners to Guests through the SmartPAY Service, with express exclusion of additional services offered by the User itself.

## **5. Payments, Late Payments, Default Interest, Additional Costs**

5.1 Payment of the consideration shall be made by the following methods:

- credit / debit card (e.g.: VISA, MASTERCARD, AMERICAN EXPRESS);
- direct debit to current account/bank domiciliation,

according to the related methods chosen during the order completion phase through the Smartness Platform.

It is expressly understood that the provision and activation of Smartness Services and

Smartness Software involving payment of Monthly/Annual Recurring Fees is subject to: (i) a test charge on the credit card provided by the Client at the time of subscription of the Offer or (ii) the activation of SEPA direct debit on the Client's bank current account, subject to completion of the relevant form included in the Offer.

- 5.2 In the case of direct debit to the User's current account, the User, by entering into the Contract, expressly authorizes the Supplier to carry out everything necessary for the execution of the transaction, undertaking from now on to sign and/or authorize any document and/or request that will be made by its credit institution.
- 5.3 In the event of delay by the User in payment of the consideration referred to in this article, even if caused by third parties, the User shall be required to pay interest at the default rate pursuant to Legislative Decree 231/2002 and subsequent amendments, from the due date to actual payment.
- 5.4 In the event of default by the User, the latter shall also be required to reimburse the expenses incurred by the Supplier for the activation of credit recovery procedures, including out-of-court procedures.
- 5.5 After 10 days from the due date of each invoice, the Supplier shall have the right to suspend the provision of the Smartness Services and Smartness Software subject to this Contract, without the need for prior notice and with release from any liability for any damages suffered by the User, including consequential damages and loss of profits.
- 5.6 If the User fails to make payment within 15 days of the suspension of the Smartness Services / Smartness Software subject to this Contract, the Supplier may terminate the Contract pursuant to Article 1456 of the Italian Civil Code, by written notice effective from the date of receipt.
- 5.7 In the event that the User has activated a payment method by direct debit to current account, bank domiciliation or credit/debit card, for each unsuccessful transaction, the Supplier shall have the right to charge the User, in the first available invoice, the amount corresponding to the costs incurred for any penalties, commissions or additional charges applied by banking institutions or payment circuits.

## **6. Activation and Use**

- 6.1 The User, during the order completion phase through the Smartness Platform, is required to communicate to the Smartness Group the PMS and Channel Manager in use at the Property – where different from the Smartness Group's PMS and Channel Manager - as well as any other necessary information requested by the Smartness Group for the purposes of the Activation of Services. Any variation of the PMS and/or Channel Manager in use at the Property that may occur during the term of the Contract must be promptly communicated to the Smartness Group by email to [support@smartness.com](mailto:support@smartness.com) or to the different address indicated by the Supplier or by opening a support ticket through the chat available on the Smartness Platform.
- 6.2 The User acknowledges and accepts that the timing of the Activation of Services, upon completion of Onboarding, varies based on the type of PMS used by the User. Following the sending by the Supplier of the subscription confirmation, the User, if not already in possession thereof, will be provided with a Smartness Account. Through the Smartness Account, the User will be required to communicate all information necessary for the purposes of the Activation of Services as well as to register. The User also acknowledges that for the Activation of Services, access to the systems in use at the Properties via API may be necessary, in order to acquire the necessary information. To this end, the User is required to perform all operations necessary for the connection by releasing all necessary authorizations.
- 6.3 The Smartness Account is personal and non-transferable and the User undertakes to diligently keep the access credentials to the Smartness Account as well as not to transfer

and/or disclose them to third parties and/or grant access to the Smartness Account in favor of third parties. The User shall be solely responsible for any loss and/or disclosure to third parties of the access credentials to their Smartness Account as well as for damages that may arise from untruthful and/or outdated information as well as from improper and/or unauthorized use thereof, including by third parties. The User is required to promptly report to the Supplier any loss of credentials and/or access by third parties and/or any abuse.

- 6.4 The User shall be required to manage with the utmost diligence the Smartness Account and any other tool or device necessary for the use of the Smartness Software and shall adopt, among other things, adequate and satisfactory technical and organizational measures to ensure an adequate level of security and control over all devices, passwords and personal identification numbers/codes necessary to access and use the Smartness. The Supplier shall in no case be liable for the User's inability to access or use the Smartness Software, for the loss of Personal Data, information and/or documents and in any case for any other Damage of any nature resulting from the loss, theft or compromise of the Smartness Account, access credentials and any other tool or device necessary for the use of the Smartness Software.
- 6.5 The User also acknowledges and accepts that the Smartness Software, Smartness Services and any Third-Party Services are characterized by technical requirements that the User's IT systems and/or those used by the User's employees and collaborators - including the telematic connection used to access the Smartness Software - must meet in order to ensure the correct use of the Smartness Software and/or Smartness Services. The User therefore undertakes to equip itself and its Users with IT systems (including devices, hardware, software and telematic connections) adequate for the use of the Smartness Software and, in any case, meeting the minimum requirements detailed in the relevant user manuals. In no case may the Supplier be held liable for any malfunctions or for the inability to use the Smartness Software arising from the inadequacy of the User's IT systems and/or those used by Users with respect to the indicated requirements.
- 6.6 The User shall be solely and exclusively responsible for the Personal Data, information, documents and/or content stored, sent, published, transmitted and/or shared in the context of the use of the Smartness Software, as well as for the Output generated by the Smartness Software itself at the User's request by reason of the Input entered by the User.
- 6.7 Unless this is necessary to comply with legal provisions and/or requests from the judicial authority, the Supplier is in no way required to verify the aforementioned Personal Data, information, documents and/or content and, therefore, may in no way be held liable for Damages, direct or indirect and of any nature, arising from the use thereof by the User, who undertakes to hold the Supplier harmless and indemnified from any related damage, expense, liability, cost and/or negative consequence that may arise in this regard. For clarification purposes, it is specified that any approval, consent or confirmation provided by the Smartness Software following the upload of one or more of the aforementioned Personal Data, information, documents and/or content shall be understood as purely formal and part of the document management process by the Smartness Software, thus not implying any verification regarding the completeness, correctness and/or truthfulness of the contents thereof.
- 6.8 In addition to the foregoing, the User shall be solely and exclusively responsible for the adoption of adequate measures to protect its IT system, as well as all Personal Data, documents and/or information contained therein. By way of example, the User shall be solely responsible for the choice and implementation of procedures relating to security, encryption, use and transmission of data - including Personal Data - backup and recovery of its Personal Data, data, information, documents and/or content, in any case within the limits and terms of use of the Smartness Software.
- 6.9 The User acknowledges and accepts that the provision of Smartness Services and the

use of Smartness Software and/or their specific functionalities may depend, in whole or in part, on the interfacing and/or interaction with Third-Party Services (including cloud applications, online platforms, AI Systems), the use of which may, as the case may be, be the subject of specific and separate agreements between the Supplier and said third parties. In these cases, the use of the aforementioned Third-Party Services will be governed by the terms and conditions so agreed and applicable from time to time (the "**Third-Party Terms and Conditions**"), with respect to which the Supplier shall be considered as a third party and in any case exempt from any liability. The User, therefore, acknowledges and accepts to use, itself as well as its employees and collaborators, said Third-Party Services exclusively in the manner and according to the terms provided by the Third-Party Terms and Conditions, and shall comply with any technical and regulatory limitation contained therein. It is also understood that the management of Personal Data, information and/or documents of the User by the Third-Party Services, as well as the ownership of the Developments obtained by the User through said Third-Party Services and of any other aspect relating to their use in the context of the use of the Smartness Software is subject to the Third-Party Terms and Conditions, which the User undertakes to fully comply with.

6.10 In any case, the User acknowledges that the Smartness Services and Smartness Software are based on the use of artificial intelligence systems and that, by their nature, such systems may generate results or suggestions that are not always free of errors or perfectly suited to the User's specific needs or to every possible application scenario, with respect to which the Supplier shall be considered exempt from any liability.

6.11 In particular, the User acknowledges and accepts:

- a) not to use trademarks, copyrighted works or other materials the use of which may result in violation of third-party IP Rights as Input for third-party AI Systems, except with explicit and specific written consent from the relevant holder for the use of such IP Rights in such context;
- b) not to generate and in any case not to use Output that may result in violation of third-party IP Rights, except with explicit and specific written consent from the relevant holder for the use of such IP Rights in such context;
- c) not to use Input containing Personal Data, unless the User has obtained all appropriate consent required by applicable law and/or there is a lawful legal basis to be identified among those provided by applicable law;
- d) not to use Input that is prohibited, unlawful or otherwise contrary to, or incompatible with, any legal or regulatory obligation provided by any applicable law (including, by way of example, Regulation (EU) 2024/1689 and Law No. 132/2025 on Artificial Intelligence, etc.) or the principles of public order and morality.

6.12 Except to the extent expressly permitted by applicable law, the User may not decompile, decrypt, *reverse engineer*, disassemble, modify or in any way reduce the Smartness Software to human-readable format or even attempt to do any of the foregoing. The User is expressly prohibited from making backup copies of the Smartness Software.

6.13 The User, even in the event of termination of the effects of this Contract for any reason whatsoever, undertakes not to contest the ownership of the IP Rights owned by the Supplier and/or other companies of the Smartness Group on the Smartness Services and Smartness Software and on the Confidential Information, as well as not to carry out any initiative, action or conduct (such as, e.g., hacking, analysis, reverse engineering, circumvention of technological security measures implemented with reference to the Smartness Software) that may cause prejudice, hinder or jeopardize the ownership

and/or peaceful exploitation by the Supplier of the aforementioned IP Rights.

6.14 It is understood that the User authorizes the Supplier and the Smartness Group, during the term of this Contract and thereafter, to retain a copy of the data, documents and/or information processed by the User through the Smartness Services and/or Smartness Software, and that the same may be used by the Supplier for internal purposes and, in any case, for evolutionary maintenance as well as for the further development of the related software and services. The User hereby consents to the retention and use just described, granting to the Supplier, as may be necessary, a non-exclusive, free, perpetual, irrevocable and non-transferable license for the use of the aforementioned data, documents and/or information in the terms described above. It is also understood that, with regard to Personal Data, where appropriate with respect to the purposes indicated, the same will be anonymized and retained to the extent permitted by applicable law.

## **7. Duration. Withdrawal. Termination**

7.1 The Contract shall be valid and effective from the date of dispatch of the confirmation of subscription by the Supplier.

Unless otherwise specified in the offer, the subscription plan has a duration of 12 (twelve) months, starting from the date indicated in the shopping cart at the time of signing the Contract. The start date of the Contract may vary depending on the timing of the start and completion of the Onboarding activities.

7.2 In relation to the timing of commencement and completion of the Onboarding activities, the Supplier may request from the User the payment of flat-rate activation charges for the performance of the Onboarding activities, as set out in the cart when completing the order at the time of entering into the Contract. The fee shall be payable from the date of commencement of the Onboarding and, in any event, no later than the date indicated in the cart available on the Smartness Platform at the time of entering into the Contract.

7.3 Upon expiry, the Contract shall be tacitly and automatically renewed for a further 12 (twelve) months, unless either Party gives the other Party at least 30 (thirty) days' notice of termination prior to the expiry date, by completing the appropriate section of the personal area on the Smartness Platform, accessible via the Smartness Account.

7.4 In any case, it is understood that if: (a) within 180 (one hundred and eighty) days of signing the Contract, for reasons attributable to the User, (i) the Onboarding activities are not started, or (ii) it is not possible to complete the Onboarding activities; or ( or (b) the User gives notice of termination of the Contract before the completion of the Onboarding activities, the Contract shall be deemed terminated and any consideration already paid by the User for any reason may be retained at the Supplier's sole discretion, without the User being entitled to claim any refund, even partial, of the same.

7.5 The Parties retain the right to reach any other agreement in writing, even if it derogates from the provisions of this Article 7.

### **So-called "trial" formulas**

In the case of subscription to plans with a "trial" formula, the User shall have the right to withdraw from the Contract at any time during the "trial" period; however, the withdrawal shall only take effect at the end of the "trial" period. If the User has paid an amount in advance for the trial period, this amount shall not be refundable, even in the event of withdrawal.

7.6 It is understood that even if the User takes actions and/or omissions that do not allow the Activation of the Services, the User remains obliged to pay the fee on the due dates indicated by the Supplier in the shopping cart.

- 7.7 If the User has purchased multiple Smartness Services and/or Smartness Software together (bundle), they may notify their cancellation with reference to all Smartness Services and/or Smartness Software or only some of them. In this case, the User acknowledges and accepts that the partial termination of Smartness Services and/or Smartness Software may result in the application of the full rate for the Smartness Services and/or Smartness Software retained, with the consequent loss of any discounts provided for the joint purchase of Smartness Services and/or Smartness Software (bundle).
- 7.8 In any case of exercising the right of withdrawal pursuant to this article, the User shall not be entitled to refunds and/or compensation and/or indemnities and/or reimbursements or to any amount as consideration for the right of withdrawal and/or for its exercise, or for any other reason. In any case, the Supplier shall retain the right to receive payment of the consideration due for the Smartness Services and/or Smartness Software provided until the withdrawal takes effect.

## **8. Modifications to the Contract and to the Smartness Services and Smartness Software**

- 8.1 Any request for modification to the Smartness Services and/or Smartness Software by the User, in terms of quantity and/or type, must be made and accepted and approved exclusively in writing by the Supplier, possibly also through the appropriate section of the personal area on the Smartness Platform.
- 8.2 Without prejudice to the provisions of the preceding Paragraph 4.4. in the event of an update of the consideration for the provision of Smartness Services and Smartness Software, the User accepts that the Supplier reserves the right to make operational modifications to the Terms and Conditions and/or the Contract by publishing the new Terms and Conditions on the Supplier's website (such as, by way of example, modifications to the name of the Smartness Services and/or Smartness Software, technical updates, organizational changes, etc.) without obligation of prior notice and without the User being entitled to any right of withdrawal. Such modifications shall be deemed effective from the moment of their publication on the Supplier's website, unless otherwise indicated by the Supplier. If the Supplier intends to make substantial modifications to fundamental clauses of the Contract, such as by way of example the clause "Duration. Withdrawal. Termination", that provide for worsening conditions for the User, the Supplier must give written notice to the User with 30 calendar days' notice and the User, within the same term, shall have the right to withdraw from the Contract, it being understood that the withdrawal shall take effect at the end of the notice period referred to in this article. It is understood that the User is required to pay the consideration due for the Services until the effectiveness of the withdrawal and, if applicable, pro-rata. In the absence of exercise of the right of withdrawal by the User, within the terms and in the manner indicated herein, the modifications shall be deemed definitively known and accepted by the User and shall become definitively effective and binding at the end of the notice period.
- 8.3 The User acknowledges that the sector in which the Smartness Group operates, as well as the Smartness Services and Smartness Software themselves, are characterized by a high degree of technical and regulatory complexity and are subject to continuous technological, regulatory and market evolutions and changes. Consequently, during the term of this Contract, the need may arise for the Smartness Group to adapt its

organization and/or the technical and functional structure of the services offered to its customers, also in the interest of the latter, in order to adapt to the changed situation. The User hereby accepts that the characteristics of the Smartness Services and/or Smartness Software provided, the methods of provision, the related functionalities may undergo unilateral changes by the Supplier. If such changes result in the closure or deactivation of the Smartness Services and/or Smartness Software subject to this Contract, without the same being replaced by comparable services and/or software and/or having identical functionalities, the Supplier will notify the User and the User shall have the right, within the following 30 (thirty) days, to communicate to the Supplier its intention to withdraw from this Contract.

## **9. User's Obligations**

9.1 The User is solely responsible for the correctness and truthfulness of the information and data entered during the order phase, as well as for the use of the Smartness Services and Smartness Software.

9.2 The User undertakes in particular to:

- promptly communicate to the Supplier any variations in the information and data provided such as, by way of example and not limitation, the number of Units as well as configurations necessary for the correct provision of the Smartness Software Services and Smartness;
- accept policies and terms and conditions of use of third parties possibly necessary for the use of the Smartness Services and Smartness Software such as, by way of example and not limitation, communication channels not attributable to the Supplier and use them in accordance with the provisions thereof;
- equip itself with all the tools necessary for the correct use of the Smartness Services and Smartness Software such as, by way of example, internet network, hardware tools as well as keep them constantly updated.

9.3 In any case, the User is prohibited from publishing content and/or using the Smartness Services and Smartness Software in a manner contrary to the law and in any case for purposes other than the purposes of the Services, by way of example and not limitation:

- unlawful and/or discriminatory and/or in any case likely to cause damage to the Supplier and/or other Users and/or third parties;
- in violation of third-party rights, including intellectual property rights;
- likely to prejudice the functionalities of the Smartness Services and Smartness Software and/or the equipment of the Smartness Group and/or other Users and/or third parties;
- likely to damage the image of the Smartness Group and/or clients of the Smartness Group and/or other Users and/or third parties;
- in violation of these Terms and Conditions.

9.4 The User therefore undertakes to indemnify and hold harmless the Supplier and the Smartness Group from any detrimental consequence, including Damages of any nature as well as from any claim and compensatory action that may arise therefrom.

9.5 The User who makes inappropriate use of the Smartness Services and Smartness Software remains solely responsible for the consequences that may arise therefrom. The Supplier reserves the right to suspend the use of the Smartness Software Services and Smartness, without notice, in all cases of breach by the User of these Terms and Conditions and/or if it finds that the User has provided data, information and/or any

element that is untruthful, contrary to the law, harmful to copyright and/or any third-party rights and/or in any case in the event of violation of the Terms and Conditions by the User as well as in the event that the User has registered on behalf of third parties without being duly authorized.

- 9.6 It is also understood that in the event of use of the Smartness Services and Smartness Software that is improper and/or in violation of the Terms and Conditions and/or the law, the Supplier may delete without notice the content as well as block access to the User.
- 9.7 The User undertakes to adopt all necessary and/or appropriate measures in order to prevent the theft and/or any unauthorized use of the Smartness Account and access credentials to the Services, as well as to prevent computer fraud. The User declares to have procedures in place aimed at reducing, identifying and managing IT risks and to have adopted adequate organizational and technical security measures capable of ensuring the protection of the information of which it becomes aware and IT security, including by way of example and not limitation, firewalls and antivirus software, keeping them constantly updated and carrying out periodic checks.
- 9.8 The User also undertakes to indemnify and hold harmless the Smartness Group from any sanctions of any nature and kind, as well as from the payment of amounts, if due to third parties due to improper use of the Smartness Services and Smartness Software and/or in violation of the Contract and/or legal provisions.
- 9.9 The User is solely responsible for the payment of taxes and/or duties arising from the use of the Smartness Software Services and Smartness, undertaking to indemnify and hold harmless the Smartness Group from any damage and/or amount and/or consequence that may arise from the violation of this article.

## **10. No Warranty, Exclusion and Limitation of Liability of the Supplier and the Smartness Group**

- 10.1 With the exception of mere technical suitability for the purpose for which the Smartness Software and/or Smartness Services are intended pursuant to this Contract, and to the maximum extent permitted by applicable law, the Supplier, also on behalf of the other companies of the Smartness Group, does not grant and in any case disclaims any and all warranties, implied or express, relating to the Smartness Software and/or Smartness Services and/or their use, including, without limitation, any warranty relating to their uninterrupted use, or for the suitability and/or effectiveness thereof in actually achieving the desired results or those described in the Contract or for any other specific function, absence of errors or defects, compatibility with other IT systems.
- 10.2 All Output provided by the Smartness Software and/or Smartness Services, as well as the Smartness Software and/or Smartness Services themselves, shall be understood as provided "as is" and without any warranty, express, implied or otherwise, regarding their accuracy, completeness, correctness or suitability for specific uses.
- 10.3 The Parties acknowledge that the use of the Smartness Software and/or Smartness Services may involve the use of Third-Party Services (including AI Systems) over which the Supplier and/or other companies of the Smartness Group exercise no control. The Supplier and/or other companies of the Smartness Group, therefore, disclaim any liability with respect to the use of said Third-Party Services (including AI Systems) as well as their operation.
- 10.4 No compensation or indemnity shall be due from the Supplier and/or other companies of the Smartness Group to the User in relation to events arising from the failure to meet the technical requirements that the User's IT systems and/or those used by the relevant employees and collaborators - including the telematic connection used to access the Smartness Software - must meet in order to ensure the correct use of the Smartness Software and/or Smartness Services, from issues relating to the telematic connection or

from other obligations that fall under the User's responsibility pursuant to this Contract, as well as arising from force majeure events such as, by way of example, strikes, riots, earthquakes, acts of terrorism, civil unrest, sabotage, war, floods, measures by authorities.

- 10.5 The Supplier may not be held liable, under any circumstances, for any malfunctions of the Smartness Software and/or Smartness Services arising from technical failures, network overloads, interruptions – even temporary – of telephone, internet connectivity or electricity services, from the presence of programming errors or incorrect configurations, nor for inaccuracies in the entry of data by the Client or in the execution of operations requested by the latter.
- 10.6 No compensation shall be recognized for direct or indirect damages arising from the use, or the inability to use, the Smartness Software, Smartness Services or connected systems.
- 10.7 The Supplier and/or the Smartness Group shall in no way be liable for any disruptions related to external tools or platforms not directly managed by its servers and not expressly included in this Contract, such as third-party sales channels, search engines, online payment systems, etc. The use of such tools by the User must be in compliance with the obligations provided for in this Contract, and any issues must be handled directly with the respective suppliers. The Supplier assumes no responsibility regarding the correctness and/or reliability of the data as well as the results that the User may obtain using the Smartness Services and/or Smartness Software, nor does it provide any warranty in this regard.
- 10.8 The User acknowledges and accepts that the obligations assumed by the Supplier and/or the Smartness Group are obligations of means and not of result.
- 10.9 In no case shall the Smartness Group be liable for any loss of profit and/or loss of earnings, for any other type of economic damage for direct and/or indirect, consequential damages, arising from or in connection with the use, conditions, possession, *performance*, maintenance, failure or delayed operation of the Smartness Services and/or Smartness Software, even in the event that the Supplier has been informed and/or has become aware of said circumstances.
- 10.10 The User acknowledges that the Supplier and the Smartness Group cannot be held liable for malfunctions and/or suspensions and/or delays in the operation of the Services arising from:
- i) force majeure events such as, by way of example and not limitation, strikes, fires, natural events;
  - ii) measures by public bodies and/or the judicial authority and/or the governmental authority;
  - iii) logical inaccessibility to the Services due to changes in access credentials by the User;
  - iv) inability to access the Services and/or unavailability due to actions attributable to the User and/or third parties;
  - v) interruption of the operation of the Services and/or caused by the User and/or due to the unavailability of networks of other providers;
  - vi) malfunctions and/or failures and/or anomalies and/or maintenance caused by the User;
  - vii) volumes of use of the Services that exceed the contractually provided limits and/or connected to the structure and/or nature of the Services;
  - viii) unavailability due to updates of physical infrastructures and/or other scheduled maintenance interventions;
  - ix) malfunction of the internet network with the consequent possible interruption of the operation of the Services;

- x) malfunction of the personal computer and/or notebook and/or smartphone and/or tablet and/or hardware and/or any device of the User also due to files downloaded from the Internet and/or installed and/or not correctly used by the User that prejudice the correct operation of the Services;
  - xi) failure by the User to update its hardware and/or software by the User's free choice and also where there has been a specific request by Helium and/or third parties and not executed by the User;
  - xii) obsolescence of hardware and/or software and/or any tool used by the User;
  - xiii) third-party services, also possibly integrated and/or otherwise connected to the Services.
- 10.11 It is understood that the Smartness Group is extraneous to any activity carried out by the User through the Smartness Services and/or Smartness Software as well as to any relationship that the User maintains with third parties, whether Guests and/or affiliated partners providing additional services and/or other persons, through the same. The rates and any price applied by the User at the Property are the sole responsibility of the User. Without prejudice to the provisions of the Contract, in no case does the Smartness Group manage payments and/or sums received by the User and/or third parties and must be held extraneous and indemnified by the User for any requests that may come from third parties, whether Guests and/or affiliated partners providing additional services as well as from Authorities and/or other bodies.
- 10.12 The liability of the Smartness Group, for what is attributable to it, may in no case exceed an amount equal to 12 monthly payments of the consideration agreed in the Contract.
- 10.13 The Smartness Group is in no case liable for any overbooking of the Property and/or incorrect operation of third-party software integrations.
- 10.14 The Smartness Group is not liable for the content of any message and/or communication sent through the Smartness Software as well as in the event that the same are identified as spam and/or the User's communication channels are blocked or disabled.

## **11. Suspension of Services**

- 11.1 The Supplier reserves the right to suspend the Services and/or their use, without notice, in all cases of breach by the User of economic obligations and/or in any case of violations by the User. It is understood that in the event of suspension pursuant to this article, the User must still pay the consideration agreed in the Contract.
- 11.2 It is also understood that in the event of improper use of the Services and/or in violation of the Terms and Conditions and/or legal provisions, the Supplier may delete without notice the content as well as block access to the User, without prejudice to the payment of the consideration by the User.

## **12. Industrial and Intellectual Property**

- 12.1 All IP Rights, including without limitation copyrights relating to the Smartness Services and/or Smartness Software, to each of their components, versions and/or derivatives, in any language and/or code format (e.g. source code, object code), are and shall remain the full and exclusive property of the Supplier and the companies of the Smartness Group.
- 12.2 The User shall not acquire any title or right to the IP Rights by virtue of this Contract or the use of the Smartness Services and/or Smartness Software pursuant to this Contract, except for the limited and temporary rights of use thereof provided herein. The User undertakes not to engage in any conduct that may prejudice the IP Rights of the

Supplier and the Smartness Group mentioned above.

- 12.3 All information, Personal Data, data, documents and/or information processed and/or managed using the Smartness Services and/or Smartness Software are and shall remain the property of the Client or its assignors.
- 12.4 The User undertakes to indemnify and hold harmless the Supplier and the Smartness Group from Damages and/or any detrimental consequence that may arise from the User's violation of any IP Right owned by the Supplier and/or the Smartness Group and/or third parties.
- 12.5 The User hereby authorizes the Supplier to publish on its websites and/or channels the name and/or logo of the Property and/or the results achieved for the User through the Smartness Services and/or Smartness Software.

### **13. Assistance and Maintenance**

13.1 The User is required to communicate any malfunctions and/or failures and/or operating anomalies of the Smartness Services and/or Smartness Software in writing to the Supplier by email to the email address [support@smartness.com](mailto:support@smartness.com) or to the different address indicated by the Supplier or by opening a support ticket through the chat available on the Smartness Platform.

It is understood that the assistance service will not be provided by the Supplier in all cases where the malfunctions and/or failures and/or anomalies are not attributable to the Supplier itself.

13.2 The Supplier will provide maintenance, updating and technical adaptation of the Smartness Services and/or Smartness Software in order to preserve their functionalities. The performance of scheduled maintenance interventions including interventions, by way of example and not limitation, of a technical and regulatory nature and/or that may be necessary for the correction of any errors and/or malfunctions will be communicated in writing to the User with reasonable notice, except in cases of urgency, and may result in limitations in the use of the Smartness Services and/or Smartness Software without this entailing any liability for the Supplier and/or the Smartness Group. Therefore, any inability to use the Smartness Services and/or Smartness Software by the User shall not be considered a breach of the obligations of the Supplier and/or the Smartness Group.

### **14. Prohibition of Assignment**

14.1 The User is prohibited from assigning, in whole or in part, the Contract, except with the specific written consent of the Supplier. For clarity, even in the event that the User is subject to a change of control event such as, by way of example and not limitation, (i) the change of the person, natural and/or legal, who expresses the majority of votes cast at the shareholders' meeting or, in the event that no person has a majority exceeding 50%, the change of the person, natural and/or legal, who holds more than 25% of the votes cast at the shareholders' meeting; (ii) the sale and/or lease of the business and/or a branch thereof (collectively the "Change of Control Event"), the User undertakes, without delay, to communicate such event to the Supplier. The Supplier shall have the right, at its sole discretion, to terminate the Contract, with immediate effect, by sending a written notice to that effect, as well as in the event that the User fails to communicate the Change of Control Event.

### **15. Confidential Information and Secrecy**

15.1 In the context of the execution of this Contract, the Supplier, the companies of the

Smartness Group and/or the relevant personnel may communicate to the Client certain Confidential Information relating to the Smartness Services and/or Smartness Software and their use. In this regard, the Client undertakes:

- a) to keep the Confidential Information confidential and secret and not to disclose or otherwise make it available to any third party;
- b) not to make any use of the Confidential Information, nor to keep copies thereof, except for the use of the Smartness Services and/or Smartness Software, pursuant to this Contract;
- c) not to patent or otherwise register in any way any information or data contained in, or deduced or elaborated from, the Confidential Information;
- d) to take all reasonably necessary and appropriate measures and precautions to prevent the disclosure and unauthorized use of the Confidential Information;
- e) to limit access to the Confidential Information and the use thereof only to its employees and only to the extent strictly necessary to enable them to use the Smartness Services and/or Smartness Software;
- f) to inform the aforementioned employees of the confidentiality obligations relating to the Confidential Information.

15.2 The Client acknowledges that the Confidential Information, including all intellectual property rights relating thereto, is owned by or otherwise belongs to the Supplier and the respective companies of the Smartness Group.

15.3 Information that is in the public domain at the time of communication or becomes so subsequently without fault of the Client, or that the Client can demonstrate was already known to it before the execution of this Contract or was lawfully communicated to it by third parties without confidentiality obligations, is not included among the Confidential Information.

15.4 The Client's obligations pursuant to this Article shall remain effective until the Confidential Information becomes public domain for reasons not attributable to the Client.

## **16. Protection of Personal Data Processing**

16.1 The Parties declare that they comply with the provisions on personal data protection provided by EU Regulation 2016/679 (the "GDPR") and by Legislative Decree 196/2003 as amended by Legislative Decree 101/2018, and that they fulfill the obligations arising therefrom, adopting adequate technical and organizational measures to ensure a level of security proportionate to the risk.

16.2 In the context of the relationship governed by this Contract, the Supplier acts as Data Controller of the Personal Data processed in the execution of the Contract for the purposes of evolutionary maintenance of the Smartness Software and for the development thereof and of other software and related services as well as for marketing purposes, also relating to products and services similar to those subject to the established relationship, carried out by email or through other systems to the addresses of representatives, officers, contacts, employees and collaborators of the Client where it is a legal entity, body or association, acquired in the context of the contractual relationship. The personal data acquired will also be processed for the performance of administrative, accounting, organizational and technical activities related or instrumental to the management of the contractual relationship with the same Client (e.g., for the definition and execution of the Contract, invoicing of services, management of access and use of the software made available under this Contract, management and maintenance of the related systems and platforms, assistance and help-desk activities in support of the Client's users, etc.) in compliance with the purposes (and the respective

legal bases) described in the privacy policy on the processing of personal data pursuant to Articles 13 and 14 of the GDPR, available on the Smartness Platform and which the User accepts at the time of order confirmation, which constitutes an integral and substantial part of this Contract and which the User expressly declares to have received, viewed and made available to the data subjects.

16.3 Conversely, the Supplier acts as Data Processor with reference to the processing of personal data owned by the User regulated by the agreement entered into pursuant to Article 28 of the GDPR (Data Processor Appointment Agreement, available at the link indicated in the Offer), which the User signs at the time of order confirmation, which constitutes an integral and substantial part of this Contract and which the Parties expressly declare to have viewed and accepted. The User, where acting in its capacity as data controller, remains the sole party responsible for the fulfillment of all obligations provided for by the GDPR and the relevant national legislation, as well as by the general or binding measures of the Data Protection Authority, releasing the Supplier from any liability arising from non-compliance or breaches incumbent on the User in its capacity as data controller.

## **17. Representations, Warranties and Indemnification Obligations**

17.1 Each Party represents and warrants to the other that, as of the Date of Execution and for the entire Duration of this Contract:

- i. such Party has all the authorizations necessary for the purposes of executing this Contract and correctly fulfilling its obligations provided for under this Contract;
- ii. this Contract has been correctly executed by authorized representatives of the Party and is binding and effective against such Party;
- iii. neither the execution nor the performance of this Contract by each Party will constitute a material breach or default of (a) obligations or restrictions provided for in the corporate documentation of the relevant Party, (b) any agreement to which the Party is bound, including confidentiality agreements, non-competition or exclusivity obligations, and/or (c) applicable laws or regulations.

17.2 The User represents and warrants to the Supplier that:

- i. The User has and will have, for the entire Duration of this Contract, the legitimate availability, also in accordance with the current provisions on personal data protection, of all information, Personal Data, documents and/or information that will be processed through the Smartness Software and/or Smartness Services, and that the same may be freely used by the Supplier and the Smartness Group for the purposes of the execution of this Contract and that the use thereof by the Supplier and the Smartness Group does not violate any IP Right, nor any other right or expectation of third parties;
- ii. none of the Personal Data, data, information and/or documents that the User intends to process through the Smartness Software and/or Smartness Services is prohibited, unlawful or otherwise contrary to, or incompatible with, any legal or regulatory obligation provided by any applicable law or with the principles of

public order and morality or with any binding or general measure prescribed by public Authorities/Agencies (including the Data Protection Authority).

- 17.3 Each Party shall hold harmless and indemnify the other Party from any and all Damages that the other Party would not have suffered if the representations and warranties made by the other Party had been truthful, complete and accurate. Furthermore, the User shall hold harmless and indemnify the Supplier from any and all Damages that the Supplier and/or the Smartness Group and/or the respective shareholders may suffer by reason of (i) the violation of intellectual property rights and IP Rights, or of any other third-party rights, arising from the use of the Smartness Services and/or Smartness Software by the User and the relevant personnel, as well as (ii) the violation of any obligation assumed by the User towards third-party suppliers of Third-Party Services.
- 17.4 The indemnification obligations provided herein are in any case subject to the occurrence of all the following conditions: (i) the indemnification of Damages suffered shall be due only insofar as said Damages arise from a settlement agreement reached by the Party that suffered the Damages (the "**Indemnified Party**") with the written consent of the Party required to indemnify pursuant to this Article (the "**Indemnifying Party**"), or from a judicial decision that has ordered the Indemnified Party to pay said Damages; (ii) the Indemnifying Party has been promptly informed in writing by the Indemnified Party of the threatened or pending litigation and has been put in a position to direct the negotiation of any settlement agreement and the related judicial proceedings; (iii) the Indemnified Party has cooperated with the Indemnifying Party, providing all necessary documents and information and adapting its conduct to the reasonable instructions received from the Indemnifying Party.

## 18. Communications

- 18.1 Unless otherwise provided by the Contract or by separate written agreements between the Supplier and the User, any communication relating to the operation of this Contract, including by way of example and not limitation communications relating to contractual modifications, termination, modifications to the characteristics of the Smartness Services and/or Smartness Software, variations in consideration, shall be deemed validly made by using the appropriate "Communications" section of the Smartness Platform and/or by email to the addresses indicated below. The User undertakes to regularly check the communications published on the Smartness Platform and acknowledges that the same produce the same effects as communications sent by email pursuant to this article.
- 18.2 If, pursuant to this Contract or separate agreements between the Parties, the sending of communications by email is provided, the same shall be addressed as follows:
- to the Supplier:  
**Helium S.r.l.**  
at the address: [support@smartness.com](mailto:support@smartness.com) or at the different address indicated by the Supplier
  - **User**  
at the address communicated during the order phase,  
or at the different address that each Party may communicate to the other subsequent to the execution of the Contract in accordance with this article.

## **19. Express Termination Clause**

- 19.1 The Supplier may terminate the Contract with the User with immediate effect, without the need for formal notice and/or notice of default, by sending the User a simple written communication to that effect:
- in the event of violation by the User of the obligations provided for under Articles 2, 3, 4, 5, 6, 7, 9, 10, 12, 14, 15, 16 and 17 of the Terms and Conditions.
- 19.2 In such cases, the User shall pay to the Supplier the consideration still due for the Smartness Services and/or Smartness Software possibly already provided and for which a consideration has not been paid and, as a penalty pursuant to Article 1382 of the Italian Civil Code and without prejudice to the right to compensation for greater damage, an amount equal to the consideration relating to the monthly payments remaining until the natural expiry of the Contract.

## **20. Miscellaneous**

- 20.1 If any article of the Terms and Conditions (or part thereof) or the application of a provision (or part thereof) is held invalid, illegal or unenforceable by a Court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other article of the Terms and Conditions or the application of a provision (or the remaining part thereof).
- 20.2 The titles of the clauses contained in the Terms and Conditions are solely intended to facilitate reference thereto, but not to define, limit, describe or identify the content thereof.
- 20.3 The specific remedies to which both parties may resort pursuant to the Terms and Conditions are cumulative and are not to be understood as excluding other remedies pursuant to the same or the law. No waiver by either party, whether express or implied, of any right arising from the Terms and Conditions or of any objection to any breach or default of a provision, shall constitute or be deemed a definitive waiver of such right or of any other provision, objection to breach or default of the Terms and Conditions. The acceptance of any payment by either party shall not be deemed a waiver of objecting to any further breach or default by the other Party of any provision of the Terms and Conditions.
- 20.4 Each Party is responsible for determining and bearing which, if any, taxes and/or duties and/or other charges apply in relation to the Contract.
- 20.5 Any tax and/or duty on the Contract: (a) if demanded or arising as a result of a "Case of Use", an "Enunciation" or a "voluntary registration" of the Contract, shall be borne by the party that caused the "Case of Use", the "Enunciation" or the "voluntary registration"; if demanded or arising as a result of a breach of the provisions included in the Contract, shall be borne, also as a penalty, by the party whose conduct made it necessary.
- 20.6 All amounts indicated in the Contract and/or communicated by Helium, unless expressly indicated, are understood to be exclusive of VAT if applicable.

## **21. Language**

- 21.1 These Terms and Conditions are drafted in Italian, with the English and German versions being mere translations. In the event of disputes, the Italian version shall therefore prevail.

## **22. Execution of the Contract**

- 22.1 For the purposes of the execution of the Contract, signatures affixed by checking the relevant checkbox on the Smartness Platform as well as electronic signatures, digital signatures and signatures affixed through remote signing platforms (such as, by way of example, GetAccept, DocuSign or similar) are considered valid and effective for all purposes between the Parties. Such methods of execution are equivalent to handwritten signatures and produce the same legal effects.

## **23. Applicable Law and Exclusive Jurisdiction**

- 23.1 The Contract and these Terms and Conditions are governed exclusively by Italian law, with express exclusion of the rules of private international law on applicable law and, as may be necessary, the applicability of the United Nations Convention on the International Sale of Goods is also excluded.
- 23.2 For any dispute that may arise in relation to the Contract and/or the Terms and Conditions and/or the use of the Services, the Court of Rovereto shall have exclusive jurisdiction, with express exclusion of any concurrent jurisdiction.