
smartPM.solutions GmbH
Terms and Conditions
(SaaS and Software Licensing)

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1 SCOPE

- 1.1 **Subject Matter of Agreement.** These General Terms and Conditions (hereinafter “GTC”) apply to all services provided by smartPM.solutions GmbH (hereinafter referred to as “smartPM”) in connection with the provision of smartPM modules and the supply of software programmes from the technology company and software manufacturer IBM with interfaces to smartPM modules (hereinafter referred to as “Base Software” or “Base Software Programme”), including support and IT services. IT services within the meaning of these GTC include, in particular, implementation, configuration, customisation, training and IT consulting.
- 1.2 **The Customer’s Terms and Conditions.** Any conflicting or additional terms and conditions of the Customer shall only apply if smartPM expressly confirms them in writing.

2 QUOTATIONS; CONCLUSION OF CONTRACT; SUBCONTRACTORS

- 2.1 **Conclusion of Contract.** A contract is concluded upon acceptance of the offer submitted by smartPM to the Customer, but at the latest upon acceptance of the delivery or use of the products or services (“Individual Contract”).
- 2.2 **Order of Precedence.** If these GTC and an Individual Contract contain different provisions on the same subject matter, the provision of the Individual Contract shall take precedence.
- 2.3 **Subcontractors.** smartPM is entitled to have the contractually agreed services performed by qualified subcontractors.

3 PROVISION OF SMARTPM MODULES

- 3.1 **Rights of Use.** Unless otherwise agreed between the parties, the Customer is entitled to use the smartPM modules in accordance with the terms of use of the Base Software Programme into which the smartPM modules are integrated.
- 3.2 **Term.** The term of the licence for a smartPM module commences upon its delivery and the transfer of the access details to the Customer. If smartPM is responsible for installing the smartPM module, the installation forms part of the delivery. Unless otherwise specified in the Individual Contract, the term ends after one year, calculated from the start of the term. The term shall be automatically extended by periods of one year each unless terminated in writing by either party at least three months prior to the expiry of the respective term. Termination of the licence for a Base Software Programme shall not constitute termination of the licence for a smartPM module used in conjunction therewith, nor shall termination of the licence for a smartPM module constitute termination of the licence for the associated Base Software Programme. The parties’ contractually granted rights of termination and the right of each party to terminate for good cause remain unaffected.
- 3.3 **Intellectual Property.** smartPM and its licensors are the owners of all rights to the smartPM modules. With the exception of the rights of use expressly granted to the Customer by contract, the Customer shall not acquire any rights to the smartPM modules.

4 PROVISION OF THE BASE SOFTWARE AS A SERVICE (UPON PURCHASE OF BASE SOFTWARE AS A SERVICE FROM SMARTPM)

If the Customer purchases Base Software from smartPM, the following provisions of this clause 4 shall apply.

- 4.1 **Provision of Services.** smartPM shall make the Base Software Programmes described in the Individual Contract available to the Customer, subject to the availability specified in clause 4.7 of these GTC, on one or more central data processing systems (hereinafter referred to as **“Server(s)”**, even in the plural) for access via an internet connection (hereinafter, including the storage space in accordance with clause 4.2 below, **“Services”**). The Base Software is not transferred to the Customer.
- 4.2 **Provision of Storage Space.** Subject to the availability specified in clause 4.7 of these GTC, smartPM shall, during the term of the contract, provide storage space on the Server for the data uploaded to the Server by the Customer and its authorised employees (hereinafter referred to as **“Customer Data”**).
- 4.3 **Term.** The Customer’s entitlement to use the Services (hereinafter referred to as **the “Service Term”**) shall commence upon the provision and making available of the Base Software Programme on the Server. Unless otherwise specified in the Individual Contract, the Service Term shall end after one year, calculated from the start of the Service Term (hereinafter referred to as the **“Initial Term”**). The Service Term shall be automatically extended by periods of one year each (hereinafter **“Renewal Term(s)”**) unless terminated in writing by either party at least 3 months prior to the expiry of the respective term. The parties’ contractual rights of termination and the right of each party to terminate for cause remain unaffected.
- 4.4 **Delivery.** The delivery of the Services shall take place at the technical point of transmission at the data centre in which the Server is located. The Customer is responsible for the internet connection between the Customer and the data centre and the hardware and software required for this (e.g. PC, network connection), as well as for the configuration of the Customer’s IT environment necessary to access the Services (e.g. firewall settings).
- 4.5 **Customer Data.**
- 4.5.1 **Use of Customer Data.** The Customer grants smartPM the non-exclusive right to use the Customer Data to fulfil smartPM’s obligations under this contract, in particular to reproduce this Customer Data on the Server, either itself or through a subcontractor, for the purpose of providing the Services, and to make it accessible to authorised users.
- 4.5.2 **Customer Data upon Termination of the Contract.** The Customer must submit a written request to smartPM for the return of Customer Data following the end of the Service Term at least 30 calendar days prior to the end of the term. A request by email or as a service request in the support ticket system is sufficient. smartPM reserves the right to charge the Customer for activities relating to the provision and transfer of Customer Data at its current list prices.

- 4.6 **Further Development.** The Base Software is continuously being developed. However, the basic functions will always remain in place. Furthermore, the providers of Base Software Programmes are free, taking the Customer’s interests into account, to add functions to the software at any time or to remove functions that are no longer useful.
- 4.7 **Availability.** The Services are subject to a monthly service availability of 98% in relation to the delivery point specified in clause 4.4 of these GTC. Such availability is calculated as follows:

$$\frac{\textit{Total minutes per month} - \textit{Excluded Downtime} - \textit{Downtime}}{\textit{Total minutes per month} - \textit{Excluded Downtime}} * 100$$

Excluded from the availability calculation is the total number of minutes per month attributable to the following (“**Excluded Downtime**”): (i) Scheduled maintenance, (ii) suspension of the Services due to circumstances for which the Customer is responsible, and (iii) periods of unavailability due to factors beyond smartPM’s control, e.g. due to unforeseeable events that cannot be prevented even with the exercise of reasonable care.

4.8 **Customer’s Obligations**

- 4.8.1 **Data Storage.** The Customer shall back up the Customer Data regularly and in a manner commensurate with the importance of the Customer Data, and shall create its own backup copies outside the Server to enable the reconstruction of such Customer Data in the event of its loss.
- 4.8.2 **Compliance with Data Protection.** When using the Services, the Customer shall comply with applicable data protection laws, in particular by obtaining the necessary consent of the data subjects concerned, insofar as the Customer collects, processes or uses personal data when using the Service and no other legal basis for processing applies.
- 4.8.3 **Compliance with Third-Party Rights.** The Customer shall observe all third-party rights in the content used by the Customer (e.g. when transmitting third-party texts/data to the Server).
- 4.8.4 **Virus Protection.** Before sending Customer Data to the Server, the Customer shall scan it for viruses and use state-of-the-art virus protection software.
- 4.8.5 **No Misuse.** The Customer shall not misuse the Services or allow them to be misused; in particular, the Customer shall not store on the Server any content that is unlawful or immoral and/or content that incites hatred, encourages criminal acts, glorifies or trivialises violence, is sexually offensive or pornographic, or is likely to seriously endanger the morals of children or young people or impair their welfare, or damage the reputation of smartPM or the provider of the Base Software, and shall not refer to such content . Furthermore, the Customer shall not use the Services: (i) for mass surveillance, racial profiling, or in any manner that violates fundamental human rights or other applicable laws and regulations, or incites such violations; (ii) for fully automated decision-making in connection with use cases involving critical processes or the risk of loss of life, property, or impact on a person’s legal rights; (iii) in a manner that impersonates another person for fraudulent purposes or conceals the fact that a user is interacting with artificial

intelligence, or (iv) to disseminate or intentionally generate malware or other malicious code.

- 4.8.6 **Protection against Unauthorised Access.** The Customer shall take reasonable precautions to prevent unauthorised access to the Services, in particular to protect the Services from unauthorised use. The Customer is obliged to keep user IDs and passwords confidential and not to make them accessible to unauthorised third parties. Authorised users must be expressly urged to comply with these GTC.
- 4.8.7 **Obligation to notify in the Event of an Infringement of Intellectual Property Rights.** The Customer shall notify smartPM immediately upon becoming aware of any infringement of an industrial property right or copyright relating to the software or the Service, or of the disclosure of user IDs or passwords to unauthorised users.
- 4.9 **Suspension of Access.** smartPM is entitled to suspend access to the Services temporarily or permanently if there are concrete indications that the Customer is or has been in breach of these GTC, the contract and/or applicable law, or if smartPM has any other legitimate interest in the suspension. When deciding on a suspension, smartPM shall take the Customer's legitimate interests into account appropriately.
- 4.10 **Terms and Conditions for IBM Software.** IBM excludes its own liability to the Customer, as the provider of the Base Software, for consequential damages and other indirect damages, as well as for implied warranties, including implied warranties of non-infringement of third-party rights, merchantability and fitness for a particular purpose. The Customer is not entitled to use the IBM software separately from the overall solution (including the smartPM modules).

5 SUPPORT

smartPM shall provide support during the Service Term in accordance with the Support Policy attached as **Appendix 1** to these GTC.

6 AUDITS

Subject to reasonable notice, smartPM and its independent auditors shall be entitled to verify the Customer's compliance with this Agreement at all locations and in all environments in which the Customer uses the software and Services. The audit shall be conducted in such a way as to cause as little disruption as to the Customer's business operations as possible and may be carried out on the Customer's premises during normal business hours. smartPM shall enter into a written confidentiality agreement with the independent auditors. If any uncovered underpayments exceed 5% of the total cost or value of the software licences or Services, the Customer shall reimburse smartPM for the costs of the audit. This shall also apply if the audit reveals any use of the contractual products and services or parts thereof that is in breach of the contract. smartPM's other rights remain unaffected. The Customer further undertakes to provide smartPM and/or the auditors, upon request, with additional information to demonstrate that the software and Services are being used in accordance with the contract.

7 IT SERVICES

- 7.1 **Obligations of smartPM.** If the Customer purchases IT services from smartPM, smartPM shall provide the services specified in the Individual Contract. smartPM shall not be obliged to provide any further services. smartPM shall provide the agreed services in accordance with the current state of the art, the service description and using professional expertise. smartPM shall be entitled at any time to replace employees with other qualified employees or service providers. Unless expressly stipulated otherwise in the Individual Contract, smartPM shall not be obliged to achieve specific results.
- 7.2 **The Customer's Duty to Cooperate.** The Customer shall provide the cooperation services agreed in the Individual Contract (e.g. provision of infrastructure, personnel, hardware, documents, organisational support). Unless otherwise specified in the Individual Contract, the Customer's personnel shall be available to respond to enquiries from smartPM within one working day. smartPM may request the replacement of the Customer's cooperating staff if the staff member to be replaced is not qualified or willing to cooperate. The Customer is responsible for the practical implementation of the services owed, even if the Customer and smartPM jointly draw up a plan for the practical implementation of the services owed.
- 7.3 **Deadlines.** Where Individual Contracts specify deadlines for the provision of contractually agreed services or certain parts thereof (milestones), these deadlines are merely estimated dates and are not binding, unless they are expressly designated as binding.
- 7.4 **Deliverables.** Deliverables owed by smartPM shall, in the case of deliverables which are subject to acceptance, be reviewed and accepted by the Customer in accordance with the contractually agreed criteria and tests. The Customer shall inform smartPM immediately in writing of any defects discovered during the acceptance test, including a reasonably detailed specification of the nature and conditions of such defects ("**Defect Report**"). The deliverables shall be deemed accepted if smartPM does not receive a Defect Report within 4 weeks of delivery. All rights to the deliverables shall remain with smartPM and its licensors. Unless otherwise agreed in an Individual Contract, the Customer shall be granted a worldwide, non-exclusive right to use the deliverables for their intended purpose. If deliverables are integrated into smartPM modules, smartPM shall grant the Customer the same rights to the deliverables as it does to the smartPM modules in general.

8 FEES AND TERMS OF PAYMENT

- 8.1 **Fees for Services and Support.** The Customer shall pay smartPM the agreed fee for the licensing of smartPM modules, for Services and for support. The fee for the Initial Term is payable in full within 10 days of receipt of the invoice in advance. The fee for Renewal Terms is payable in advance before the start of each contract year.
- 8.2 **Price Adjustment.** smartPM is entitled to adjust the fees listed in clause 8.1 annually as appropriate. When making such an adjustment, smartPM shall take into account any changes in costs that have occurred in the meantime in relation to wages, salaries and the costs of procuring IT services. An adjustment shall take effect on the date specified by smartPM, but no earlier than one month after the Customer has received notification of the adjustment. In the event of an increase in fees of more than 10% in each instance, the

Customer is entitled to terminate the contract with immediate effect. Notice of termination must be given in writing immediately upon receipt of notification of the increase, with effect from the date on which the increase takes effect.

8.3 **Remuneration for IT Services.** The following conditions apply to the provision of IT services:

(a) If remuneration is calculated on a time-and-materials basis, smartPM shall invoice the Customer at the end of the month for the work performed during that month on a time-and-materials basis at the agreed hourly or daily rates. The time and materials set out in a quote from smartPM constitute an estimate, unless expressly agreed otherwise.

(b) If the parties agree on a flat-rate fee, smartPM is entitled to invoice the Customer for interim payments in the amount of the value of the services provided by smartPM and due under the contract.

8.4 **Costs (IT Services).** Unless otherwise agreed, the Customer shall bear the costs of materials, travel expenses and incidental expenses incurred by smartPM in the provision of IT services. Travel expenses and incidental expenses shall be invoiced on the basis of actual expenditure and at flat-rate expense rates in accordance with the applicable statutory provisions. Travel time shall be invoiced at the same hourly rate as working time. If, in individual cases, invoicing is not based on hourly rates, a reasonable hourly rate shall apply for the calculation of travel time, taking into account the relevant qualifications.

8.5 **Late Payment.** In the event of late payment by the Customer, smartPM shall be entitled, without prejudice to further rights, to charge statutory interest on arrears. If the Customer has not made payment 30 days after the due date, smartPM shall not be obliged to provide further products and services until payment has been settled. If the invoice relates to the settlement of fees for Services, smartPM is entitled to suspend or restrict the Services until full payment has been made.

8.6 **Net Prices.** All prices are quoted as net prices plus the applicable statutory value added tax.

8.7 **Set-off; Retention.** Set-off or retention is permitted only in respect of counterclaims by the Customer that are undisputed or have been established by a final and binding court decision.

9 WARRANTY

9.1 **Exclusion of Warranty.** The Customer's warranty claims shall lapse if the Customer uses the smartPM modules or the Base Software (hereinafter referred to individually and collectively as "**Software**") in conjunction with products other than those approved by smartPM or the provider of the Base Software, or otherwise uses them contrary to the contractual terms and conditions applicable to the use of the Software, unless the Customer proves that any error that has occurred is not attributable to this fact.

9.2 **Notification of Defects.** The Customer must report any defects that have occurred in a comprehensible and detailed manner, providing the information necessary for the

detection and analysis of the defect in such a way that it is technically possible to identify the fault. In particular, the Customer must specify the steps that led to the occurrence of the defect, the form in which it manifests itself, and the effects of the defect.

9.3 **Cooperation.** The Customer is obliged to provide smartPM with reasonable support in the context of the warranty work, in particular by making the necessary information available in good time.

9.4 **Remuneration for Work not covered by the Warranty Obligation.** If the Customer alleges a malfunction of the software and it transpires during the work and analyses carried out to rectify the defect that the malfunction reported by the Customer is not attributable to a defect in the Software, smartPM shall be entitled to invoice the costs incurred in connection with the work on the basis of smartPM's list prices.

10 LIMITATION OF LIABILITY

smartPM shall be liable for damages arising from any legal basis, including delay, poor performance and non-contractual liability, exclusively in accordance with the following provisions:

10.1 **Exclusion of Liability for Slight Negligence.** smartPM shall only be liable for intent and gross negligence.

10.2 **Exceptions to the Limitation of Liability.** The limitation of smartPM's liability shall not apply in the event of injury to life, limb and/or health, or in the event of liability under the Product Liability Act.

10.3 **Employees, other Staff, Agents and Vicarious Agents.** Insofar as smartPM's liability is excluded or limited, this also applies to the liability of smartPM's employees, other staff, agents and vicarious agents.

10.4 **Force Majeure.** Neither party shall be liable for events of force majeure which render the provision of contractual products and services impossible or which significantly impede or temporarily hinder the proper performance of the contract. Force majeure shall be deemed to include all circumstances beyond the control and influence of the contracting parties, such as terrorist attacks, embargoes, seizures, natural disasters, strikes, decisions by public authorities or other serious and unforeseeable circumstances for which the contracting parties are not at fault. A circumstance shall only be deemed to constitute force majeure if it occurred after the conclusion of the contract.

11 CONFIDENTIALITY; REFERENCE CUSTOMER; DATA; DATA PROTECTION

11.1 **Confidentiality.** The parties undertake to maintain the strictest confidentiality regarding all confidential matters, including know-how and trade and business secrets, of which they become aware in the course of performing the contract, and not to disclose or otherwise use such information. This applies in relation to any unauthorised third parties, unless the disclosure of information is necessary for the proper performance of the contract.

- 11.2 **Reference.** However, smartPM is entitled to use the Customer's name and logo on the smartPM website, in financial reports, press releases, brochures and Customer lists to indicate that the Customer is a smartPM client.
- 11.3 **Use of Derived Data.** smartPM is entitled to use derived data to expand and improve the functionalities of the smartPM modules. To this end, smartPM may aggregate Customer Data with data from other customers, provided that the aggregated data (i) cannot be identified as (partly) belonging to the Customer; (ii) cannot be used as a source for identifying the Customer; and (iii) does not constitute personal data.
- 11.4 **Compliance with Data Protection.** Insofar as the Customer instructs smartPM to collect, process and use personal data, or smartPM gains access to personal data used by the Customer in the course of performing the contract, smartPM undertakes to process and use such data only in accordance with data protection regulations, in particular those of the General Data Protection Regulation (GDPR).
- 11.5 **Data Processing.** smartPM processes all personal data transmitted by the Customer to the Server or entered on the Server on behalf of the Customer. The contractual terms regarding data processing (Article 28(3) GDPR) apply between the parties; these can be viewed, downloaded and printed [here](#).

12 MISCELLANEOUS

- 12.1 **Severability Clause.** Should individual provisions of the contract be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In such a case, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps in the contract.
- 12.2 **Assignment.** smartPM is entitled to assign the contract and any Individual Contract to an affiliate of smartPM or to a purchaser of the part of the business to which the subject matter of the contract relates. The Customer hereby consents to such an assignment of the contract.
- 12.3 **Reservation of the Right to amend.** During the term of the contract, smartPM may amend the GTC in order to (1) adapt the GTC to new legal requirements or a change in supreme court case law, (2) remove any doubts as to interpretation, or (3) adapt the GTC to changes in technological developments or market conditions. smartPM shall notify the Customer of any such amendments to these GTC in writing at least 4 weeks before the amendment comes into effect. If the Customer does not object to an amendment within 4 weeks of receiving the notification, the amendments shall be deemed to have been effectively agreed. When informing the Customer of the amendments, smartPM shall specifically draw the Customer's attention to the right to object and the consequences of remaining silent.
- 12.4 **Place of Jurisdiction.** The exclusive place of jurisdiction for all disputes arising from or in connection with the contract is Vienna. smartPM is also entitled to bring an action at the Customer's place of business or before any other competent court.

12.5 **Governing Law.** Austrian law shall apply, with the exception of its provisions on the choice of law which would lead to the application of another legal system. The applicability of the CISG (“UN Convention on Contracts for the International Sale of Goods”) is excluded.

December 2025

Appendix 1 – Support Policy

1. Service Levels, Obligation to Provide Support Services

The support services to be provided by smartPM are based on the service levels booked by the Customer in accordance with the individually agreed Service Level Agreement. If no Service Level Agreement has been concluded, smartPM shall provide support services exclusively as technical support and in accordance with the following provisions of this Support Policy. There are no further support obligations. In particular, without a Service Level Agreement, there are no binding deadlines for the availability and processing time of support requests.

2. Support Hours

smartPM provides the Customer with a support hotline via telephone and via a website (ticket system) during smartPM's business hours. Business hours are Monday to Friday, 9:00 am to 5:00 pm CET, with the exception of Austrian public holidays and 24 December and 31 December (hereinafter "**Business Hours**").

3. Support Request

The Customer shall report any errors to smartPM via the support hotline in German or English through a qualified employee and shall cooperate in isolating the errors. In particular, the Customer shall provide smartPM with verifiable documentation regarding the nature and occurrence of errors and shall specify how the error manifests itself and what its effects are, as well as the circumstances under which it occurs. With each support request, the Customer must provide smartPM with an appropriate priority classification in accordance with the table in clause 4. smartPM shall confirm the priority level specified by the Customer or inform the Customer, giving reasons, of a higher or lower priority level determined by smartPM. In the event of a dispute regarding the appropriate priority level, both parties shall escalate the matter to their respective management teams. During this time, the parties shall treat the support request in accordance with the priority level specified by smartPM.

4. Priority Levels, Response Times

Depending on the priority level, smartPM endeavours to meet the response times specified in the table below. This does not constitute an obligation to meet the response times. Where a Service Level Agreement exists between smartPM and the Customer, smartPM undertakes to comply with the response times in accordance with the relevant service level package. Response times commence upon receipt of a valid support request. If the support request is received outside Business Hours, the response time commences at 9:00 am on the next business day following receipt.

The following priority levels and target response times apply:

Priority levels	Impact on Business Operations	Target Response Time (during Business Hours)
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Priority 1 – Critical	The Customer’s use of the software comes to a standstill or is so severely impaired that the entire company cannot continue to operate effectively. For example: The outage has a critical impact on the Customer’s business operations and therefore constitutes an emergency.	4 hours
Priority 2 – high	At least one of the Customer’s key business processes is blocked by a problem with the software. This constitutes a significant disruption but does not fall under Priority 1.	8 hours
Priority 3 – normal	The Customer’s business processes are affected by a problem with the software. This constitutes a minor disruption or causes certain functionalities to fail but does not fall under Priority 2.	2 days
Priority 4 – low	The Customer’s business processes are not actually affected by the issue with the software, but there may be minor problems with the usability of the application.	3 days

5. Measures to resolve the Issue

Depending on the priority level, smartPM will take the following troubleshooting measures during Business Hours.

Priority 1	smartPM will work immediately to find a workaround or other solution. Should smartPM be unable to provide a solution in the event of a fault affecting the Base Software, smartPM will contact the software provider of the Base Software and work to ensure the fault is rectified without delay.
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Priority 2	smartPM will work towards a workaround or other solution. Should smartPM be unable to provide a solution in the event of a fault in the Base Software, smartPM will contact the software provider of the Base Software and work to ensure that the fault is rectified by them, e.g. corrected in the next update or release.
Priority 3	smartPM will work towards a workaround or other solution. Should smartPM be unable to offer a solution in the event of a fault in the Base Software, smartPM will request the software provider of the Base Software to rectify the fault, e.g. in the next update or release.
Priority 4	smartPM will determine whether the fault requires rectification in the next update or release. If so, smartPM will implement this, or, in the event of a fault in the Base Software, request the software manufacturer to implement it.

5. Exclusions from Support

The following are not covered by support

- the resolution of faults not inherent to the software, e.g.
 - faults caused by operating errors,
 - faults resulting from an incorrect installation of the software carried out by the Customer or a third party, and
 - malfunctions attributable to modifications to the software made by the Customer or a third party,
- the adaptation of the software to the Customer's individual requirements or to their software environment,
- the maintenance of models and applications defined by the Customer,
- responding to general enquiries regarding the use and operation of the software,
- hardware and software installation, and
- user training.

The provision of the aforementioned services may be agreed in separate contracts and/or service level agreements.

6. Communication; Languages

smartPM shall provide support to an account administrator designated by the Customer. For communication regarding support matters, smartPM shall provide a ticket portal and a telephone hotline. Telephone and other communication charges for calls made by the Customer shall be borne by the Customer. Support shall be provided in German or English, depending on the availability of support staff.

7. Customer's Obligations to Cooperate

The Customer shall assist smartPM or the subcontractor designated by smartPM in reproducing the fault. Where necessary, the Customer shall grant remote access to their system for the purpose of fault rectification. The Customer must be available to provide smartPM with all necessary information and access, which may, where applicable, also include a detailed “step-by-step” description of the problem, screenshots and access to databases. The Customer must ensure that the transfer of the necessary data or information to smartPM is possible and permitted. The Customer shall follow the relevant instructions provided by smartPM regarding problem resolution. Where applicable, the Customer shall complete any checklists provided by smartPM for this purpose.