



OmniMove MobileForms

[OmniMove terms and conditions](#)

Version releases

Date	Version	Description
8 august 2019	1.0	OmniMove terms and conditions

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1 Definitions – General (I)

- 1.1. **Subscription:** The non-exclusive, non-transferable right to make use of OmniMove during the term of validity of the agreement, during which period the customer always possesses the latest version of the software.
- 1.2. **Active User:** A user who has made use of OmniMove. To make use of OmniMove means to view and/or edit data in an environment or while manually (or otherwise) logged in.
- 1.3. **Application Manager:** A user responsible for the installation and/or configuration of OmniMove.
- 1.4. **Data Leak:** a breach of the security of personal data that leads to a significant chance of severe negative consequences or that has severe negative consequences for the protection of Personal Data processed.
- 1.5. **Participant:** A natural person registered for participation in a training by the customer.
- 1.6. **End User:** A user who uses OmniMove to support his work with the help of the app or webform.
- 1.7. **Environment:** An environment in OmniMove in which multiple forms can be hosted.
- 1.8. **Defect:** A flaw in OmniMove as a result of which the software does not function as described in the manual.
- 1.9. **Functional Developer:** A named user who sets up and manages the functionality at the disposal of end users in a form.
- 1.10. **User:** A natural person or a non-human system or device that has direct or indirect online access to data in OmniMove.
- 1.11. **User subscription:** A subscription that permits the use of OmniMove for one or more of the customer's applications, for a fee that is based on the number of active users or credits.
- 1.12. **Named user:** A user of OmniMove with a login account for an OmniMove environment.
- 1.13. **Customer:** A natural person or legal entity who has concluded an agreement, which includes signing a proposal and/or assignment, and has accepted these OmniMove Terms and Conditions.
- 1.14. **Supplier:** OmniMove Mobile Solutions bv
- 1.15. **Agreement:** An agreement between the customer and the supplier comprising one or more matters with regard to a subscription for OmniMove or associated services.
- 1.16. **Personal Data:** All data relating to an identified or identifiable natural person.
- 1.17. **OmniMove:** The supplier's web-based software package for the management of information in and around forms.
- 1.18. **Form:** A template in which information structure, visualisation and interaction are recorded for the management of information.
- 1.19. **Processing of personal data:** Each action or set of actions relating to personal data, in any case including collecting, registering, ordering, storing, updating, modifying, requesting, viewing, using, providing through forwarding, distributing or making available in any other way, assembling, collating, as well as protecting, deleting or destroying data.

2 OmniMove terms and conditions – General (I)

2. Applicability of OmniMove terms and conditions to offer and agreement

- 2.1. These OmniMove terms and conditions apply to all of the supplier's services, products and subscriptions. If customer continues to use a service of the supplier or OmniMove (temporarily) after the end of the agreement, the OmniMove terms and conditions will continue to apply to these services and the use of OmniMove.
- 2.2. An agreement is established through the signature by the customer of a proposal or contract, in which reference is made to the OmniMove terms and conditions.
- 2.3. The OmniMove terms and conditions will not be changed during the term of the agreement. If the agreement is (tacitly) renewed, or continues after the specified term has passed, the supplier is entitled from that moment on to declare new OmniMove terms and conditions applicable to the (extended) agreement, which new OmniMove terms and conditions are now accepted by customer. The supplier will inform the customer about this in a timely manner.
- 2.4. Offers, quotations and other statements by the supplier are without obligation, unless the supplier indicates otherwise in writing.

3. Use

- 3.1. The supplier enables the customer to make use of OmniMove in the form of a user subscription for the duration of the agreement.
- 3.2.
 - a. With a user month subscription, the customer can, during the term of validity of the agreement, increase or decrease the minimum number of users in accordance with the prevailing scales and rates once every month. The new scale shall take effect on the first day of the following calendar month.
 - b. With a user year subscription, the customer can, during the term of validity of the agreement, increase or decrease the minimum number of users in accordance with the prevailing scales and rates once every year. The new scale shall take effect on the first day of the following year.
- 3.3. With a user subscription, the permitted users are employees/systems of the customer, subcontractors, suppliers, alliance parties or customers of the customer.
- 3.4. In all cases, the use of OmniMove must directly support the operations of the customer. The customer may not commercially exploit OmniMove in the form of leasing, renting, licencing, selling or any other form. The customer is permitted to charge on the costs for OmniMove user rights to the permitted users.
- 3.5. The customer is responsible for compliance with the OmniMove terms and conditions to (End)Users.
- 3.6. To determine the number of active users, the active users of all OmniMove environments under the agreement will be added up.
- 3.7. The customer is responsible for the access information and must treat this information with care. The customer is liable for each use of its access information and may not provide this information to third parties/others or allow it to be used by third parties/others. The supplier assumes that when OmniMove is accessed using the customer's access data, the accessor is an authorised user of the customer.
- 3.8. The customer must offer the supplier (or third parties engaged by it) all necessary cooperation for the determination of the subscription fee. The customer shall also offer the supplier all necessary cooperation to enable the supplier to verify the reported information.

- 3.9. If following examination it turns out that the details in the customer's reports are incorrect or unverifiable, the costs of this (external) examination will be borne by the customer, without prejudice to the customer's other rights.
- 3.10. The access information provided is strictly for personal use. It is not allowed to have several users log in under one and the same named user.
- 3.11. It is not permitted to alter OmniMove, to subject it to reverse engineering, or to decompile or disassemble it.
- 3.12. Use of OmniMove is not permitted if the user is a competitor of the supplier or if the user provides services similar to those of the supplier or supplies software with a similar functionality. It is also not permitted to use OmniMove to monitor the performance or functionality of OmniMove or for other benchmarking objectives or purposes that are competitively sensitive for OmniMove.
- 3.13. The supplier has the right to take technical measures to protect OmniMove against unlawful use. The supplier has the right to verify whether the usage restrictions are observed correctly, at the customer's location if necessary.
- 3.14. OmniMove may be bound to other usage restrictions relating to, for example, the configuration of forms, the size of reports or the maximum size of uploaded files.

4. Maintenance

- 4.1. The supplier has the right to improve, expand and update OmniMove as it sees fit in the form of new releases of the software. To the extent necessary, the supplier shall inform the customer of such changes.
- 4.2. If a customer identifies a defect in OmniMove, the customer must report this in as much detail as possible and within no more than three days. This includes the information required to reproduce the defect.
- 4.3. Following reception of the report, the supplier shall, in accordance with its usual procedures, make every effort to repair defects and/or introduce improvements in new versions of the software. The results shall be made available to the customer in a manner and at such time as determined by the supplier, taking into account the customer's urgency. The supplier has the right to introduce solutions in the software in the form of workarounds, programme bypasses or problem-avoiding restrictions.
- 4.4. The supplier shall automate any required data conversion for new versions to the greatest possible extent. If manual actions are also required in a conversion, this responsibility and implementation lie with the customer. The supplier shall, if necessary, provide relevant instructions.
- 4.5. The supplier is only obliged to maintain and support the most recent published version of OmniMove.
- 4.6. If the customer directly manages the availability and accessibility of OmniMove, the customer is not permitted to make manual changes to the installed version without the supplier's permission.
- 4.7. The customer recognises that OmniMove is standard software, which has not been developed to meet the individual requirements of the customer.

5. Support

- 5.1. Basic support is offered in the form of the possibility to ask questions about the general functioning of OmniMove and of access to the OmniMove manual, in which the functioning of OmniMove is documented. Advice and questions about the set-up or development of the specific environment or form of the customer do not fall under the offered basic support.
- 5.2. To be able to provide optimum support, the supplier has the right to view the customer's data in the form of files, screen dumps, login accounts, etc. following the customer's request.

6. Availability

- 6.1. By default, OmniMove is offered in the form of Software as a Service, making OmniMove available online via the Internet.
- 6.2. During the agreement, additional products may be made available online by the supplier as additional services. The provision of these services is at all times linked to an issued user subscription.
- 6.3. Termination or extension of a user subscription automatically leads to the termination or extension of the online availability of OmniMove and all additional provided services.
- 6.4. With the exception of scheduled non-availability due to maintenance activities, the supplier strives to provide 100% availability with the customer being in possession of the latest version of OmniMove.
- 6.5. The supplier has the right to engage third parties to make OmniMove available online and for all additional services.
- 6.6. Maintenance activities, including the placement of new versions, will to the greatest possible extent take place within time frames announced in advance and to the greatest possible extent take place outside of office hours.
- 6.7. If the Agreement has been terminated or the term of the agreement has expired, access to OmniMove will be blocked.
- 6.8. The client is aware that its use of OmniMove may in certain cases lead to nuisance or damage to other customers of the supplier, for example due to excessive use of OmniMove as referred to in article 6.9. Customer will therefore not use OmniMove consciously in such a way. If the supplier ascertains that nuisance or damage is caused by or on behalf of the customer, it will immediately report this to the customer. The customer will immediately cease its harmful and/or damaging use of OmniMove. The customer understands that the supplier may take temporary measures to ensure the integrity and availability of OmniMove in such cases - if necessary in view of the circumstances.
- 6.9. The supplier maintains a fair use policy with regard to the available CPU, bandwidth and amount of disk space per customer. In the event of non-normal application of OmniMove by the customer resulting in an above-average use of CPU bandwidth and/or disk space, the customer may be requested to reduce this to a level determined by the supplier.

7. Training

- 7.1. The supplier offers the customer the option to follow one or more of the offered trainings.
- 7.2. The customer bears responsibility for the correct choice of training and the suitability of the participants.
- 7.3. The supplier has the right to set admission requirements for participants for (parts of) trainings.
- 7.4. Cancellation by the customer of one or more participants is possible up to and including 16 days before the start of the training. Upon cancellation between 15 and 6 days before the start of the training, 50% of the fee is owed. Upon cancellation within 5 days before the start of the training, the full fee is owed. Upon cancellation by the customer, the customer does not automatically have the right to replacement of participation in the training or a replacement trainer at another time. The customer may, if desired, send a replacement for the Participant.
- 7.5. To postpone the training date for a participant, the customer must submit a request for postponement. A request for postponement must be made in writing. In the case of a request for postponement up to and including 16 days before the start of the training, no compensation is owed. In the case of a request for postponement submitted between 15 and 6 days before the start of the first training, the costs are 25% of the full fee. In the case of a request for postponement submitted within 5 days of the start of the first day of training, the customer owes the supplier 50% of the costs of the full fee. The customer shall receive a written confirmation from the supplier. Upon written postponement or cancellation, the date of reception by the supplier determines the moment of notification. As from the first day of the start of the training, the

Customer can no longer submit a request for postponement. At such time, relocation or postponement of the training constitutes cancellation. In that event, the customer owes the full cost of the training.

- 7.6. If, in the supplier's opinion, the number of applications gives reason thereto, the supplier has the right to choose to cancel the training, to combine the training with one or more other trainings, or to reschedule the training. The supplier reserves the right to change the location of the training. The supplier has the right to make organisational and substantive changes to the training if necessary.

8. Development and advice

- 8.1. The customer may place an assignment or an order with the supplier under the agreement to provide, develop or advise on Templates, links and other matters related to OmniMove.
- 8.2. All assignments are carried out by the supplier on the basis of an obligation of effort, unless the supplier explicitly accepted an obligation of results in the agreement or assignment.
- 8.3. When carrying out an assignment, the supplier shall specify the assignment in writing and indicate the required expertise and expected costs. Before carrying out the assignment, the supplier may require the customer to declare its agreement in writing.
- 8.4. The supplier determines, on the basis of availability and expertise, which persons will carry out the assignment. The supplier may hire employees from third parties to carry out the assignment. The supplier has the right to replace people by one or more other persons. The costs of the services depend on the assignment and the employee's expertise.
- 8.5. If, as part of the assignment, work is carried out on location, at least one (1) part-day (4 hours) and travel expenses will be charged.
- 8.6. All (delivery) times, (delivery) dates and estimates of hours named or agreed by the supplier are determined to the best of the supplier's knowledge, based on the information known at the time of accepting the assignment.
- 8.7. The named times, dates and hours are indicative and non-binding. If the risk arises of a significant exceedance as a result of, for example, changes in scope or delays on the part of Customers or third parties, the customer shall be contacted in good time. The customer is never entitled to damages in connection with late delivery.
- 8.8. After completing an assignment, the customer becomes responsible for the management and maintenance of the result of the assignment. The customer accepts the result of the assignment in its state at the time of completion.
- 8.9. The implementation of recommendations made by the supplier is at the customer's expense and risk.
- 8.10. The supplier has, following consultation with the customer, the right to refuse an assignment or to end it, in the interim or otherwise, if as a result of this assignment OmniMove will, in the supplier's opinion, be used improperly and or ineffectively.

9. Third-party products

- 9.1. Third parties may make products or services available, such as forms, add-ons or consultancy. The use of these products or services, as well as every form of data exchange between the customer and third parties, is exclusively binding between the customer and this third party. The supplier gives no guarantees with regard to these third-party products and services and is not obliged to support these products or services, regardless of whether they are recommended by the supplier or not, or are designated as "certified" or otherwise, unless specified otherwise in the Agreement.
- 9.2. If the customer adds or links third-party products to its environment, customer acknowledges that the supplier is not responsible for the publication, alteration or deletion of the customer's data as a result thereof.

- 9.3. To the extent that the supplier makes cost-free and/or freely distributable products or services of third parties available, the supplier is not liable for these products or services.

10. Guarantee

- 10.1. The supplier guarantees that OmniMove essentially functions in accordance with the description as recorded in the manual and that its functionality will not materially be reduced.
- 10.2. The supplier does not guarantee that OmniMove is free of defects (bugs), that OmniMove will function without interruption or that all errors will be solved.
- 10.3. In the event of not fulfilling the guarantee as described in article 10.1 and/or the availability of OmniMove is less than 99.00 % per calendar month, the Supplier applies the following procedure:
- a) Supplier identifies the cause of the non-fulfilment of the guarantee or the reduced availability.
 - b) Supplier investigates the chance that these causes will reoccur what measures can be taken to prevent such reoccurrence.
 - c) At the customer's request, the supplier reports the results of the investigation and communicates whether and, if so, which measures will be taken or have been taken against the causes.
 - d) The customer may propose additional or alternative measures, these remaining subject to the supplier's judgement.
 - e) If the measures chosen by the supplier require significant efforts or means, the supplier shall create an improvement plan.
 - f) At the customer's request, the supplier reports on the progress of the implementation of the chosen measures, communicating and, if possible, addressing any delays resulting from complications.
- 10.4. The guarantee in article 10.1 is exclusively valid:
- a) During the term of validity of the agreement in which a subscription is granted, including renewals.
 - b) If there are no problems resulting from accidents, misuse of OmniMove or use of OmniMove in a manner inconsistent with the OmniMove terms and conditions or problems that result from events that the supplier cannot reasonably influence.
 - c) If the customer meets the minimum system requirements.
 - d) If it does not concern scheduled and/or announced down-time or other interruptions.
- 10.5. With the exception of the guarantee described in this article, the supplier does not provide any other guarantees. The supplier explicitly rejects all implicit guarantees, declarations or conditions, including guarantees relating to saleability, suitability to a certain purpose, sufficient quality. These rejections apply unless applicable law requires otherwise.

11. Fee and payment

- 11.1. Depending on the agreement, the customer owes once-off or periodic fees that it must pay to the supplier.
- 11.2. All fees and prices set by the supplier are exclusive of the related turnover tax (VAT). Unless otherwise agreed, all prices are in Euros and all payments must be made in Euros.
- 11.3. The supplier is entitled to change the rates for user subscriptions annually as of 1 January, for the first time on 1 January of the calendar year following the commencement date of the Agreement, unless between the commencement date of the first agreement and the date of amendment less than three months have elapsed. Supplier informs customer no later than two months prior to a rate change. The change in the rates for additional services are periodically determined in a price list, so that additional services can be purchased by the customer at the then applicable rates.
- 11.4. Contrary to article 11.3, an increase in the rates for user subscriptions for agreements with a duration of more than one year and with a fixed end date in combination with a purchase guarantee, is limited to a maximum of the (possible) increase in the CBS Consumer Price Index (2019 = 100). This increase is calculated according to the calculation method as published on the website of Statistics Netherlands (CBS).

- 11.5. If the customer fails to pay the owed amounts to the supplier within 30 days following the invoice date, the supplier may -- following a second reminder to the customer regarding the outstanding amount -- charge statutory commercial interest. If the customer remains in default of payment of the claim following demand for payment or notice of default, the supplier may pass on the claim, in which case the customer not only owes the total amount then due, but is also obliged to remunerate all legal and non-legal expenses paid and to be paid by the supplier, including all costs for external experts.
- 11.6. If the customer, despite the fact that the supplier has sent an invoice and a reminder, has not paid the fee due within 60 days of the invoice date, the supplier may, without limitation of other rights and claims, suspend the services and right of use to OmniMove until the outstanding fee has been fully paid.
- 11.7. The supplier may decide not to exercise its rights under article 11.5 and article 11.6 if:
 - a) The relevant fees are, in the supplier's view, the subject of a reasonable dispute in good faith; and
 - b) The customer sufficiently cooperates towards solving the dispute in all reasonableness. This does not prejudice the (other) rights of the supplier.
- 11.8. The supplier invoices its services to the customer on a monthly basis in arrears. Invoices are sent by email in PDF format. If it is necessary to deviate from the standard invoicing method used by OmniMove for the Customer, additional costs may be charged for this.

12. Intellectual property

- 12.1. All rights, including intellectual property rights, relating to OmniMove, the website, documentation, training materials and all other material related to it vest in the Supplier or its licensors and not the customer.
- 12.2. The customer is not permitted to remove or change or provide to third parties copyrights, brands, trade names or any other right of intellectual property relating to the programs, software, websites, data files, devices or materials.
- 12.3. The customer guarantees that no rights of third parties oppose the making available to the supplier of devices, programs, materials intended for OmniMove environments (images, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including design materials, for purposes of use, modification, installation or incorporation (e.g. in an OmniMove environment). The customer indemnifies the supplier against any claims by third parties based on the assertion that such making available, use, modification, installation or incorporation infringes any such third-party rights.
- 12.4. All proposals, requests for improvement, recommendations or other feedback given by the customer with regard to the use and functioning of OmniMove, as well as all changes and expansions applied to OmniMove at the customer's instruction, are the intellectual property of the supplier or its licensors. The result realised in the context of advising and/or development activity also becomes the property of the supplier or its licensors, with the exception of the (parts of) forms developed for the customer. The property of the (partial) templates, software and/or documents introduced by the supplier for that purpose remains with the supplier or its licensors.
- 12.5. The customer at all times remains the owner of the information recorded in an customer environment and is the sole responsible and liable party for the content and accuracy thereof. Observance by the customer of all applicable laws and regulations in relation to the creation, storing and managing of (computer-generated) data in every field of law in which the customer uses OmniMove or sends information using OmniMove is exclusively the responsibility of the customer. The supplier is not subject to a statutory retention period for the information entered into OmniMove by the customer.
- 12.6. To the extent necessary, the customer shall cooperate with regard to the required delivery actions in order to transfer the intellectual property rights to the supplier or the supplier's licensors. If it is not possible to transfer the intellectual property rights, the supplier and its licensors shall receive a royalty-free (no-cost), world-wide, transferable, sub-licensable, irrevocable, unlimited and perpetual license.

- 12.7. In the event of termination of the agreement or upon expiry of the agreement, the customer must at the supplier's request destroy the provided copies of OmniMove.
- 12.8. The supplier indemnifies the customer against all legal claims based on the allegation that OmniMove infringes an intellectual property right of a third party.

13. Liability

- 13.1. The total liability of the supplier resulting from an imputable failure in the observance of the agreement or any other cause, this explicitly including any failure to observe a guarantee obligation agreed with the customer and any wrongful action, is limited to compensation of direct damages up to a maximum equal to the sum paid by the customer to the supplier under the agreement (hence, exclusively for the services described in these terms and conditions). This limitation of liability applies equally to any indemnification by or (obligatory) indemnification of the supplier. If the agreement has a term of validity exceeding one year, the sum is set at the total of the fees received by the supplier under the agreement (therefore exclusively for the services indicated in these terms and conditions) in the previous 12 months.
The total liability of the supplier for all damages, on whatever grounds, during the agreement shall never exceed € 500,000 (five hundred thousand Euros).
- 13.2. The liability of the supplier for indirect damages, such as but not limited to consequential damage, lost profit, lost turnover, lost savings, reduced goodwill, damage resulting from or consisting of business interruption and indirect damage resulting from claims by customers or contractors of the customer, is excluded. Damage related to the use of items, materials or programs of third parties prescribed by the customer to the supplier and damage related to the engagement of subcontractors prescribed by the customer to the supplier is also excluded. Also excluded is the supplier's liability as a result of corruption, destruction or loss of details or documents.
- 13.3. Without prejudice to the provisions of articles 13.1 and 13.2, the supplier is not liable towards the customer to the extent that a claim is based on:
 - a) Improper use of OmniMove or use in a manner not described in the manual; or
 - b) A modification of OmniMove not performed by, and/or on behalf of the supplier; or
 - c) The supplier's following of explicit instructions by the customer.The customer indemnifies the supplier against claims based on the above points a) to c).
- 13.4. The exclusions and limitations of liability referred to in articles 13.1, 13.2 and 13.3 shall be void if and to the extent that the damage is the result of intent, gross negligence or wilful recklessness on the part of the supplier.
- 13.5. The supplier's liability shall only arise if the customer has promptly provided the supplier with a written notice of default, setting a reasonable term for the resolution of the default, and the supplier continues to imputably fail to fulfil its obligations after that term. The notice of default must contain as complete and detailed as possible a description of the default.

14. Confidentiality

- 14.1. The supplier has the right to collect data to help improve OmniMove and its availability.
- 14.2. With the exception of articles 3.8, 3.13, 5.2 and 14.1, the supplier shall refrain from inspecting data of the customer, unless the supplier is obliged to do so pursuant to the law, regulation or judicial order.
- 14.3. The customer and the supplier shall ensure that all data received from the other party, of which they know or reasonably should know that they are of a confidential nature, are not disclosed to third parties except if they are obliged to do so pursuant to the law or if a court ruling compels them to do so. The party receiving

confidential data shall only use them for the purpose for which they were provided. Data are in any case deemed confidential if either party has designated it as such.

15. Other provisions

- 15.1. Termination. A party can, without being liable for damage towards the other party, terminate the agreement with immediate effect if:
 - a) The other party has, after having received a written demand and notice of default, failed to fulfil one of its obligations as described in this agreement; or
 - b) The other party becomes the subject of a request for bankruptcy or any other legal procedure relating to insolvency, placement under administration, liquidation or a resolution to dissolve; or
 - c) The party believes that its reputation or (good) name is being damaged by the other party or its customers.
- 15.2. Payment upon termination. In no case shall any termination release the customer from its obligation to pay the supplier the fees for the period preceding the effective date of termination.
- 15.3. Force majeure. Neither party is liable for inadequate performance resulting from causes that lie beyond the reasonable influence of both parties, such as fire, explosion, power failure, earthquake, flood, severe storm, strike, embargo, labour dispute, actions by civil or military authority, terrorism (including cyberterrorism), natural disasters, actions or negligence by malfunction of internet traffic services, hackers and actions or negligence by regulating bodies or government bodies (including the passing of laws or rules or other government actions that affect the provision of services by the supplier). The existence of force majeure, as referred to in this provision, does not concern the payment obligations of the customer under the agreement. If the customer is temporarily unable to pay due to force majeure, the customer shall still fulfill its payment obligations as soon as force majeure no longer occurs, at least as soon as the customer is (again) able to make payments.
- 15.4. Transfer. The customer may not transfer the agreement and/or the underlying assignments to third parties. The supplier may transfer the agreement, underlying assignments and OmniMove terms and conditions to its affiliated companies, if the supplier holds more than 50% of the shares in such company or such company is part of the same group (of companies) as the supplier.
- 15.5. Severability. If a court holds any provision in these OmniMove terms and conditions or the agreement to be invalid, void, voidable or unenforceable, the other provisions remain fully in force and the relevant provision shall be amended in such manner that the intent of the relevant provision is preserved as much as possible.
- 15.6. Applicable law. The agreement between the supplier and the customer is subject to Dutch Law. Applicability of the Vienna Convention 1980 is excluded.
- 15.7. Disputes. All disputes, disagreements or claims pursuant to or related to these OmniMove terms and conditions or an agreement shall be brought before the competent court in Arnhem (The Netherlands).
- 15.8. Provisions after termination. Article 11 (Fee and payment), article 12 (Intellectual Property), article 13 (Liability), article 14 (Confidentiality) and article 15 (Other provisions) shall remain in effect after the termination or expiry of the agreement.
- 15.9. Entire agreement. The agreement and OmniMove terms and conditions, including all appendices and written addenda, forms the entirety of the agreement between the parties and replaces all earlier and concurrent agreements, proposals and notifications, both written and verbal.

3 Privacy, Security and Archiving (II)

16. Processing of (personal) data

- 16.1. All articles in part I also apply to Part II Privacy, Security and Archiving.
- 16.2. To the extent that the supplier processes personal data for the customer in the context of this agreement, the supplier is deemed to be the processor of this data. The customer is responsible for determining the purpose and means for the processing of personal data and will be referred to as a controller for the processing of personal data. With respect to the processing of personal data, the supplier undertakes to process the personal data of the customer with due care and diligence.
- 16.3. The supplier shall process personal data consisting name and e-mail of users with the purpose of providing access to the software OmniMove.
- 16.4. For the purpose of carrying out the agreement supplier shall process the necessary personal data, given by the client or user(s).
- 16.5. Client is able to process personal data using the software OmniMove. Supplier shall not be seen as processor of this data and shall not be referred to as processor of this personal data. Customer will indemnify supplier against claims or fines, also from third parties, that are related to this.
- 16.6. The supplier shall ensure that it processes the personal data demonstrably, processed in a proper and careful manner in accordance with the laws and regulations regarding data protection and privacy. In that context, the supplier shall at least establish a register of processing and provide the client, as the controller, with a copy of that register at the first request.
- 16.7. Supplier, as a processor, unless he has obtained explicit prior written consent from the client as the controller, does not process personal data or have it processed by himself or by third parties in countries outside the European Economic Area ("EER").
- 16.8. The parties guarantee each other that their employees observe the stipulations of the law regarding data protection and privacy and the provisions of this agreement, if and to the extent that they are in any way involved in the Processing of personal data. The supplier shall observe the confidentiality described in article 14.2 and 14.3 and ensures that its employees are also bound to a duty of confidentiality regarding the processing of personal data.
- 16.9. With regard to the processing of personal data, the customer shall:
 - a) Take the necessary measures to ensure that personal data, in view of the purposes for which they are collected or subsequently processed, are correct and accurate.
 - b) Guarantee that the content and use of and the assignment for the processing as described in the agreement are not unlawful and do not violate the rights of third parties.
 - c) Ensure that persons and organisations involved have given permission for the processing of their data by the supplier. The Customer indemnifies the supplier against claims by persons or organisations involved or by persons whose Personal Data have been registered or are processed.
- 16.10. With regard to the processing of personal data, the supplier shall:
 - a) To a reasonable extent, enable the customer to meet its obligations pursuant to the law regarding data protection and privacy within the legal time limits, more specifically the rights of persons or organisations involved, such as, but not limited to, a request for inspection, correction, supplementation, removal or protection of personal data.
 - b) At the customer's first request, immediately hand over to the customer all data originating from and/or processed at the instruction of the customer in relation to this agreement.

- c) Have the option to outsource the performance of all or part of the agreement. In the event that the performance of the agreement is outsourced to a third party, that third party shall be deemed a subprocessor. The supplier shall ensure that this third party observes these provisions. The supplier shall at all times remain a point of contact for the customer and responsible for the observance of the provisions of this agreement.
- 16.11. The supplier is not permitted to provide personal data to parties other than the customer, unless it does so pursuant to a legal obligation, or court ruling or at the written request of the customer, or with the customer's written approval.
- 16.12. If the supplier must provide personal data to a third party pursuant to a legal obligation, the supplier shall:
 - a) Verify the grounds for the request and the identity of the requester and immediately, before provision of the data, inform the customer.
 - b) Do everything to limit the provision of data to that which is legally compulsory.
 - c) Enable the customer to exercise the rights of the customer and involved persons and organisations.
- 16.13. The supplier shall not store the personal data for longer than strictly necessary, including the statutory retention periods or any agreement between the parties regarding retention periods. The supplier undertakes to provide data of the customer, including personal data, to the customer at the customer's first request, or as the case may be to delete or destroy said data at the customer's request or upon expiry of the agreement. The supplier has the right to definitively remove data after the end of the agreement, without needing to inform the customer thereof in advance.

17. Inspection

- 17.1. The customer has the right at all times, but no more than once per calendar year, to verify whether the processing of personal data is in compliance with the agreement, through an inspection.
- 17.2. The customer shall only carry out (or arrange) the inspection after prior written notification to the supplier at least thirty days in advance.
- 17.3. The supplier undertakes to provide the customer or third parties engaged by the customer with all reasonably required information within a term to be determined by the customer.
- 17.4. If the customer engages a third party to carry out the inspection, the customer shall oblige the third party to maintain confidentiality.
- 17.5. The costs of the inspection are for the customer's account, if the customer has ordered the inspection.

18. Responsibility

- 18.1. In addition to article 13 Liability, the supplier, insofar as it concerns the processing of personal data, is only liable for the damage caused by processing if it has not complied with the obligations under laws and regulations regarding privacy and data protection or in violation of the lawful instructions of the controller. Supplier shall be exempt from this liability if it proves that it is not responsible for the damage-causing fact.

19. Duty to report and measures

- 19.1. If a data leak occurs at the supplier, the supplier shall report the data Leak to the customer as soon as possible after the supplier has become aware of it, stating the nature of the Data Leak, the identified and expected consequences of the data leak for the processing of personal data, and the measures that have been taken to remedy the effects. The supplier shall also propose measures to the customer that the customer or involved parties may take to remedy or mitigate the effects.

- 19.2. If a data leak occurs at the customer and this data leak relates to the subscription or the services of the supplier, the customer shall promptly report the data leak to the supplier's contact person, stating the nature of the data leak, the identified and expected consequences of the data leak for the processing of personal data, and the measures that have been taken to remedy or mitigate the effects. The customer shall also propose measures to the supplier that the supplier may take to remedy or mitigate the effects.

20. Security and back-ups

- 20.1. The supplier strives to protect the information recorded in forms and the processing of personal data, in accordance with Dutch law regarding data protection and privacy, against loss, theft, unauthorised access, external contingencies and careless, inexperienced or illegal use.
- 20.2. The supplier shall ensure that the security policy and performance of the security policy meets high standards and the data is stored in an ISO 27001 datacenter.
- 20.3. For the purpose of recovery in the event of emergencies, such as fire or loss of power, the supplier guarantees that a daily back-up of the files of the customer is stored in a different geographic location.
- 20.4. The customer is himself responsible for making back-ups for its own purposes.