

SMARTCONNECT END-USER LICENSE AGREEMENT

Cover Page

This End-user License Agreement, consisting of this Cover Page and the attached Standard Corporate Terms and Conditions (hereafter collectively, this “Agreement”) is made and entered into as of the Effective Date below, by and between Smartconnect, as defined below, and Customer, as defined below. This Agreement is valid and binding when signed by both parties and shall be effective as of the date signed below by Smartconnect (“Effective Date”).

CERTAIN DEFINITIONS AND INFORMATION. As used in this Agreement, the following terms shall have the meanings set forth below:

Smartconnect:	CUSTOMER (legal name and state of incorporation):
“Smartconnect” shall mean Smartconnect NV, a corporation organized under the laws of Belgium, and registered in the Belgian Companies’ Register under the number 0501.888.589.	“Customer” shall mean _____, a _____.
Smartconnect Headquarters and Notice Address:	Customer Headquarters and Notice Address:
Leuvensesteenweg 350, 3190 Boortmeerbeek, Belgium	
INITIAL TERM:	
“Initial Term” shall mean the period beginning on the Effective Date and ending 12 months from the 1 st day of the month following the Effective Date.	

The terms of this Agreement shall supersede the terms of the Customer Agreement set forth on Smartconnect’s Web sites.

By signing below, the Customer represents and warrants that it has read and understands all applicable parts of this Agreement, including the attached Standard Corporate Terms and Conditions.

Smartconnect NV

Customer

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

(Typed or Printed Name)

(Typed or Printed Name)

(Title)

(Title)

(Date)

(Date)

Smartconnect NV Standard Corporate Terms and Conditions

These Terms and Conditions are incorporated by reference into the Agreement entered into as of the Effective Date between Smartconnect and Customer.

CERTAIN DEFINITIONS: As used in this Agreement, the following terms shall have the meanings set forth below. Capitalized terms used and not defined herein have the same meanings given them in the Agreement Cover Page.

“Initial Term” shall mean the period commencing with the Effective Date and continuing for the number of months set forth on the Agreement Cover Page.

“Product” or “Software” shall mean the Smartcall API that provides functions to: exchange business data with Contact Center system(s), integrate contextual information with communication channels, deliver Real-time data from Contact Center system(s), application provisioning and send push messages.

AGREEMENT. In exchange for the covenants and promises set forth herein, which the parties agree are sufficient consideration, the parties hereby agree as follows.

1. CUSTOMER’S USERS. Customer agrees that it is responsible for all individual users who access and/or use the Product through Customer’s corporate account (such individuals are referred to herein as “End Users”). Accordingly, the terms, conditions, restrictions and obligations of this Agreement applicable to Customer (excluding Customer’s payment obligations to Smartconnect) shall be construed to also apply to all End Users, and Customer shall be liable for any breach hereof by any End Users. Each End User is entirely responsible for maintaining the confidentiality of their account, password, and account information.

2. SERVERS INSTALLED WITH SOFTWARE CREATED BY SMARTCONNECT; ACCESS TO CONTACT CENTER SERVERS

Smartconnect will have access to the servers on which software, created by Smartconnect, is installed for administrative and proactive and reactive maintenance. Smartconnect will also have access to the contact center servers for license purposes.

3. CUSTOMER CONDUCT. Customer is solely responsible for the contents of its transmissions through the Product. Smartconnect reserves the right to take any action with respect to the installed Product that Smartconnect deems necessary or appropriate in Smartconnect’s sole discretion if Smartconnect believes Customer or its information may create liability for Smartconnect. Customer agrees: (a) to comply with all applicable law regarding the transmission of technical data through the installed Product; (b) not to use the Product for illegal purposes; (c) not to use the Product to infringe any third party’s copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; and (d) not to transmit through the Product any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature.

4. PRIVACY POLICY. Smartconnect is dedicated to establishing trusting relationships with its customers, based on respect for personal identity and information. A current copy of Smartconnect’s Privacy Policy is available at the Smartconnect website and is incorporated herein by reference. If Smartconnect decides to change its Privacy Policy, Smartconnect will notify Customer’s Administrator via email and post a revised Privacy Policy on its website. If any Privacy Policy change materially and adversely impacts

Customer and Customer desires to object to the change, within fourteen (14) days of the effective date of the modification Customer must provide Smartconnect a written notice of objection, setting forth in reasonable detail the basis for Customer’s objection. Failure to deliver such notice within such fourteen (14) day period will be deemed acceptance to the Privacy Policy as modified. If mutual resolution is not achieved within thirty (30) days from the date Smartconnect receives Customer’s notice of objection, then the previous version of the Privacy Policy, without the objected to change, will remain in effect as to Customer.

5. SOFTWARE LICENSES.

a. Licenses. Smartconnect hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license (i) to use the Software, during the term of this Agreement to install the Software in object code form on Customer’s computers identified in writing by both Parties (e.g. on an Order Form) and on any new or replacement subsequently identified by both Parties in writing; and (ii) to use the Software solely in support of Customer’s use of the services offered by Smartconnect under this Agreement. Customer has no right to install or use any Software on computers or devices which have not been agreed upon in writing between the Parties prior to such installation or use or for any purpose which has not been agreed upon in advance and in writing by Smartconnect. There are no implied licenses that flow from this license. Customer acknowledges and agrees that the Software is provided as a license and not a sale and Customer receives no rights other than those specifically granted to Customer herein.

b. Ownership and Use of Software. Smartconnect retains all right, title and interest in and to the Software. The Software and all parts thereof are the subject matter of various proprietary rights, including without limitation copyrights, trade secrets, patents and other similar intellectual and industrial property rights (“Proprietary Rights”). No license, right or interest in any trademark, trade name or service mark of Smartconnect or any third party is granted under the licenses contained in this Section. Customer acknowledges that these licenses shall in no way be construed to provide an express or implied license to modify or improve any of the content of the Software, including without limitation any works, inventions, discoveries, technology or other items which are the subject matter of Smartconnect’s Proprietary Rights, or otherwise to use or exploit the Software or the Proprietary Rights in any matter not expressly permitted herein.

c. Restrictions. Customer shall not, and shall not permit others to transfer to any other person or entity any of its rights to use the Software; or to sell, rent, sublicense, or lease the Software. Customer is prohibited from attempting to create or derive any of the source code or other technology or data within the Software by disassembly, decompile, reverse engineering or any other method, or otherwise reduce the Software to a human-perceivable form. Customer is further prohibited from modifying or translating any part of the Software and from creating any derivative works, functionally equivalent works, or translations based upon the Software.

d. Termination. Customer’s license to the Software will automatically terminate without notice upon expiration or termination of this Agreement. All licenses to the Software will terminate immediately without notice from Smartconnect if Customer or any of its End Users fails to comply with any provision of this Section, but if such violation relates only to a single End User, then the licenses will not terminate as to the Customer and its other End Users so long as Customer cures the violation within ten (10) business days following the earlier of knowledge of the violation or receipt of written notice from Smartconnect regarding the violation. Upon termination, Customer must cease all use of the Software and return or destroy all copies of the Software.

e. **Third Party Software.** If software provided by a third party is identified on Exhibit A, either (i) subject to the terms of this Agreement including any limitations contained in Exhibit A, Smartconnect grants to Customer a non-exclusive perpetual license to use such third party software and related documentation (“Third Party Software”) or (ii) a license to use such Third Party Software is granted directly from the third party to Customer pursuant to a separate agreement (“Third Party License”) in which event the terms and conditions governing the use of the Third Party Software will be the terms of the Third Party License and not this Agreement. Smartconnect is not authorized to negotiate changes of any kind to any Third Party License. If any Third Party Software is used for the purposes of this Agreement, then the Software and the sublicensed Third Party Software are referred to herein collectively as the “Software.”

6. CONFIDENTIAL INFORMATION. “Confidential information” is that information which, regardless of form or method of disclosure, either party specifically designates as confidential at the time of disclosure; and any information, regardless of form or method of disclosure, customarily treated as confidential by a reasonable person. All information provided by Customer to Smartconnect in connection with the activation of Product or any End User accounts is confidential information of Customer. Neither party shall use confidential information of the other party for any purpose other than for the purpose of providing or using the Product or as otherwise expressly permitted herein. Each party shall exercise reasonable care not to disclose, and to prevent its employees and agents from disclosing, any confidential information of the other party. If a party is compelled to disclose confidential information under the authority of a court or governmental agency, the compelled party shall promptly notify the other party. The other party shall have the opportunity to object to the compelled disclosure prior to production of such information.

7. REPRESENTATIONS AND WARRANTIES.

a. **Warranties by Customer.** Customer represents and warrants to Smartconnect that: (i) Customer is duly organized and validly existing and has the legal power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the person signing this Agreement on behalf of Customer is duly authorized to do so, and upon its execution by such person, this Agreement is the valid and legally binding obligation of Customer; and (iii) Customer’s and its End Users’ use of the Product do not and will not during the term of this Agreement, in any manner violate any applicable law or regulation.

b. **Warranties by Smartconnect.** Smartconnect represents and warrants to Customer that: (i) Smartconnect owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the term of this Agreement, to provide the Product as contemplated by this Agreement; (ii) Smartconnect is duly organized and validly existing and has the legal power and authority to enter into this Agreement and to perform its obligations hereunder; (iii) the person signing this Agreement on behalf of Smartconnect is duly authorized to do so, and upon its execution by such person, this Agreement is the valid and legally binding obligation of Smartconnect; (iv) Smartconnect’s Product as supplied to Customer in connection with this Agreement do not violate any applicable law or regulation; and (v) the Software does not infringe upon any third party’s patent, trademark or other intellectual property rights.

c. **No Other Warranty.** EXCEPT FOR ANY EXPRESS WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH (b) OF THIS SECTION, THE PRODUCT AND THE SOFTWARE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. Smartconnect expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Smartconnect makes no warranty that the Product or the Software will be

uninterrupted, timely, secure or error free, that the Software will operate in the combinations that may be selected by the Customer, or that any transmission through the Product will be sent or received. No statement, whether oral or written, obtained by Customer from Smartconnect shall create any warranty not expressly made herein. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply.

8. LIMITATIONS OF LIABILITY AND INDEMNIFICATION.

a. **Consequential Damages Waiver; Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SOFTWARE OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO LOST REVENUE; LOST PROFITS; LOSS OF BUSINESS OR GOODWILL; WORK STOPPAGE; REPLACEMENT GOODS OR SERVICES; LOSS OF DATA OR INFORMATION; LOSSES ASSOCIATED WITH TRANSACTIONS ENTERED INTO OR NOT ENTERED INTO THROUGH THE PRODUCT; LOSS RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER’S TRANSMISSIONS OR DATA, COMPUTER FAILURE; AND TELECOMMUNICATIONS CHARGES FROM UNAUTHORISED ACCESS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OF CONTRACT (INCLUDING BREACH OF CONTRACT OR BREACH OF WARRANTY), TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, CONSUMER PROTECTION, OR OTHERWISE. THE AGGREGATE AND TOTAL LIABILITY OF SMARTCONNECT TO CUSTOMER OR ANY THIRD PARTIES FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE LESSER OF (i) THE AMOUNT PAYABLE BY CUSTOMER TO SMARTCONNECT HEREUNDER DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE LOSS OR DAMAGE FIRST OCCURS, OR (ii) 5.000 EUROS.

b. **Indemnification.** Subject to the limitations set forth elsewhere in this Agreement, each party (the “Indemnifying Party”) will indemnify, defend and hold the other party and its subsidiaries, affiliates, officers and employees (the “Indemnified Party”) harmless from and against any and all costs, liabilities, losses, and expenses (including but not limited to reasonable attorneys’ fees) (collectively “Losses”) resulting from any claim, suit, action, demand, or proceeding (each, an “Action”) brought by any third party against the Indemnified Party arising from: (i) a Default by the Indemnifying Party, (ii) the gross negligence or willful misconduct of the Indemnifying Party or its employees, agents, contractors, or invitees, or (iii) any failure by the Indemnifying Party or its employees, agents, contractors, or invitees, to comply with the law.

c. **Procedures.** The Indemnifying Party’s obligations under the preceding paragraph (b) of this Section herein are conditioned upon: (i) the Indemnified Party promptly notifying the Indemnifying Party upon receipt of written notice of the Action for which the Indemnified Party seeks indemnity; (ii) the Indemnified Party tendering control of the defense of such Action and any related settlement discussions to the Indemnifying Party (provided, however, that the Indemnified Party may participate in such defense, at its own expense, with counsel of its own choosing); and (iii) the Indemnified Party, at the Indemnifying Party’s request and expense, reasonably cooperating with and assisting the Indemnifying Party in its efforts to defend the Action. The Indemnifying Party shall obtain the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld or delayed, for any settlement or compromise of any such Action that does

not include an unconditional release of the Indemnified Party from the indemnified liability hereunder.

9. DEFAULT AND REMEDIES.

a. Default by Smartconnect. The occurrence of any of the following will be a "Default" by Smartconnect: (i) Smartconnect fails to perform or observe any of its obligations under this Agreement after a period of thirty (30) days after receiving notice from Customer of such failure; or (ii) Smartconnect's insolvency or liquidation as a result of which Smartconnect ceases to do business; or (iii) the material breach of any representation or warranty made by Smartconnect in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by Smartconnect within thirty (30) days after receiving written notice from Customer of such breach. A violation of the SLA is expressly not a breach of a representation or warranty and is not a Default hereunder.

b. Default by Customer. The occurrence of any of the following will be a "Default" by Customer: (i) Customer fails to pay, when due, any amounts owing to Smartconnect hereunder; or (ii) the material breach of any representation or warranty made by Customer in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by Customer within thirty (30) days after receiving written notice from Smartconnect of such breach; or (iii) Customer fails to perform or observe any of its other obligations under this Agreement after a period of thirty (30) days after receiving written notice from Smartconnect of such failure; or (iv) Customer's insolvency or liquidation as a result of which Customer ceases to do business.

c. Customer's Remedies for Default by Smartconnect. If Smartconnect commits a Default, Customer will be entitled, at its election, to terminate this Agreement or seek any available remedies at law or in equity.

d. Smartconnect's Remedies for Default by Customer. If Customer commits a Default, Smartconnect will be entitled, at its election, to exercise any one or more of the following remedies, then or at any time thereafter: (i) to pursue any remedy available at law or in equity, (ii) to terminate this Agreement; and (iii) to suspend Product. In addition, if this Agreement is terminated prior to completion of the then current term for any reason other than due to Smartconnect's Default or in accordance with the SLA, Customer shall, within 10 days of the effective date of termination, pay Smartconnect a termination charge (which Customer hereby acknowledges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty) equal to 100% of the fees that would have been paid for the Product had the Product been provided for the entire duration of the then current term.

10. TERM. The term of this Agreement will commence on the Effective Date and continue for the Initial Term set forth on the Cover Page, and thereafter shall automatically renew for successive terms equal to the length of the Initial Term (each a "Renewal Term"), unless notice of non-renewal is given by either party no less than ninety (90) days before expiration of the Initial Term or any Renewal Term then in effect. Customer will be deemed to have accepted Smartconnect's then current charges for each Renewal Term unless Customer gives notice to Smartconnect of its rejection of any increase in charges no later than fourteen (14) days after Customer receives notice thereof. If Customer rejects any increase in charges, this Agreement shall terminate on the date that is thirty (30) days after Customer gives notice to Smartconnect of its rejection of such increase and during such period prior to termination the previous charges will apply. Upon expiration or termination of the Product license or this Agreement, Customer's right to use the Product immediately ceases, Customer shall have no right and Smartconnect will have no obligation thereafter to support the Customer or any third party. Smartconnect will have the right to validate that the

servers on which the Smartconnect software is installed are disabled or turned off.

11. OTHER PROVISIONS.

a. Non-Assignment; No Third-Party Rights. Customer may not assign or transfer this Agreement or any rights hereunder, and any attempt to do so is void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement is for the sole benefit of the parties, and nothing herein will be construed as giving any rights to any person not a party hereto.

b. Independent Contractors. The parties will have the status of independent contractors, and nothing in this Agreement will be deemed to place the parties in any other relationship, including employer-employee, principal-agent, partners or joint ventures.

c. Non-Waiver/Severability. Failure of either party to enforce any of its rights hereunder will not be deemed to constitute a waiver of its future enforcement of such rights or any other rights. If any term of this Agreement is held to be invalid, the remainder of the Agreement will remain in force.

d. Force Majeure. Either party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by or due to any cause beyond its reasonable control, including, but not limited to acts of God, earthquake, flood, third party labor disputes, utility curtailments, power failures, explosions, civil disturbances, vandalism, riots, war, governmental actions, and acts or omissions of third parties. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

e. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of Belgium. The UN Convention on Contracts for the International Sale of Goods is expressly disclaimed. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators in accordance with those Rules. The arbitration shall be conducted in the English language.

f. Integration. This Agreement expresses the complete and final understanding of the parties with respect to the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral with respect to the subject matter hereof. No modification of this Agreement will be binding upon the parties hereto, unless in writing and executed by Customer and Smartconnect.

g. Notices. Except where other means of communication are expressly provided for in this Agreement, all notices provided for hereunder will be in writing, signed by the party giving the same, and will be deemed properly given and received (i) on the next business day after deposit for overnight delivery by an overnight courier service or (ii) three business days after mailing, by registered or certified mail, return receipt requested. All such notices or other instruments or communications will be sent to the Customer Address set forth on the Cover Page or to the Smartconnect Notice Address set forth on the Cover Page, as applicable. Either party may change its address for notices hereunder by notice to the other party.

h. Survival. The respective obligations of Smartconnect and Customer, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding Proprietary Rights, Confidential Information, limitation of liability and indemnification, shall survive the termination or expiration of this Agreement.

Exhibit A: Third party software:

In accordance with Section 5.e of the End User License Agreement (“EULA”), Smartconnect can use Third Party Software as part of the Smartcall Software. To date, the Third Party Software used by Smartconnect consists of the following software (this list can be updated – The latest version is found on smartconnect.eu/eula):

Vivocha (vivocha.com)
Surfly (surfly.com)
Engagor, Obi4One
Wireless Services (whatsapp)
FlowXO
SMS gateways
Facebook
Any Contact center API (Mitel, Genesys,Cisco, Avaya, Altitude,Vocalcom)

Smartconnect will provide the customer with a connector to link the Smartcall Software to the Third Party Software. Smartconnect grants to the Customer the right to use this connector for the purposes allowed under the EULA. These purposes will include use of the Software, configuration purposes, creation of user accounts, changes to settings of the Software, changes to the layout of the Software, etc. (always on the condition that such uses are in line with the EULA).

Smartconnect will provide support to the Customer on the integration of the Third Party Software to the Smartcall Software. Smartconnect will also provide support to the Customer on the Smartcall connector linking the Third Party Software to the Smartcall platform. Minor changes to Third Party Software versions that may affect the Smartcall connector are included in the support.

Major changes to Third Party Software are not included. In order to guarantee a continued functioning of the Smartcall Software, Smartconnect will have the right to invoice the Customer for major upgrades to the connector.

Smartconnect will inform the Customer if the Customer needs to enter into a separate agreement with a provider of Third Party Software to use the Third Party Software.

Smartconnect will not provide support on the Third Party Software itself. It is the responsibility of the Customer to arrange such support directly with the provider of the Third Party Software.

Smartconnect may decide to provide the Third Party Software with or without new connector functionalities. New connector functionalities may result in higher prices and/or additional licences.

Smartconnect will have no liability in case the integration or functioning of the Third Party Software can no longer be guaranteed and/or is ceased (including in case of bankruptcy or financial problems of providers, take-overs or company/group restructuring, decisions of providers or right owners to not provide rights/access to the Third Party Software, etc.). Smartconnect will use its best efforts to support the connector to the Third Party Software until the end of the Agreement with the Customer. Smartconnect will use reasonable efforts to search for alternative solutions. Smartconnect will have no liability whatsoever for changes to the Third Party Software or to the price of the Third Party Software, or in case it is no longer possible to provide the Third Party Software for any reason whatsoever, or in case the integration of the Third Party Software leads to technical problems. Smartconnect has no liability for the content or availability of any third party services, software or websites, even if Smartconnect provides a link or integration to such services, software or websites.

The price of the connector to link the Third Party Software to the Software is mentioned in the Smartconnect pricelist. This connector is developed by Smartconnect, who owns all rights to this connector.

Smartconnect has the right to change its prices in case the right holder of the Third Party Software changes its prices or applies new conditions or in case new developments need to be done on such Third Party Software or the Smartcall connector. If the Customer does not agree with such new prices, the Customer will have the right to terminate the EULA by the end of its term, or in common agreement with Smartconnect and/or the right holder of the Third Party Software (where relevant).