

# SMART

## Condensed conditions of use

Before you can make use of SMART you must read and accept the Terms of Use. For your convenience you find the most important terms in short below:

1. You are granted a non-transferable license to download, install and use SMART on a personal device on the terms and conditions of these Terms of use. You have no rights in or to SMART other than this licence.
2. You may not provide or otherwise make SMART available, in whole or in part, in any form to any person for commercial purposes.
3. You must be over 16 years and legally competent to use SMART or else have the permission of your parent(s) or guardian(s).
4. You may not use SMART for illegal purposes or other unauthorized activities.
5. You may not disassemble, decompile or reverse engineer the whole or any part of SMART, make alterations and modifications to or derivative works based on SMART or combine or incorporate SMART or parts of SMART in any other service, program or product.
6. SMART is provided as is and as available without any warranty of any kind and with limited liability and support. You are responsible for your own safety while using SMART. To the extent not prohibited by law, we are in no event or situation liable for
  - a. Any damage or personal injury caused by using or rather lack of functioning of SMART
  - b. Hardware or software glitches, outages or errors
  - c. Accuracy or completeness of registered data or displayed data or loss of data
  - d. Business interruption or loss of business
  - e. Any situation that occurs when somebody else is using your device or can see your data
  - f. Any situation that occurs due to the use of SMART and the battery consumption this entails
  - g. Force majeure situations
7. We reserve the right to change, suspend, remove or disable access to SMART at any time without individual notice.
8. We reserve the right to change or terminate the licence. You can always stop using SMART and end the licence by removing SMART from your device.

# SMART

## Complete Conditions of use

*version 1.0, effective 1st January 2015*

These conditions of use ('Usage conditions') form a contract between you ('the User') and Mobidot B.V. (The Licensor) for the SMART App ('Service').

By downloading, installing and using the Service the User declares his agreement with the terms and conditions of the Usage conditions. In the event that the User does not agree with the Usage conditions or does not comply with them, the User should withhold from downloading and installing the Service or he should terminate use of the Service and uninstall the Service.

### **1. Description of the Service**

The Service is designed as a personal instrument to make smarter travel choices. To be able to use the Service, the User must register to create a personal account wherein individual data, information and rewards are stored. The Service does not include the delivery or functioning of telecommunication devices such as a smartphone, nor the delivery of telecommunication services, most notably Internet or online connectivity.

With a SMART account, the User can log in to the Service. The Service will use the User's smartphone to automatically measure travel behaviour and offers the User a summary of routes followed, transport used and places visited by the User. From the time of login, the Service creates a "logbook" for the User of all his/her personal travel ('Trips'). The Service analyses and enhances these Trips into a personal travel profile, simply and without the need for action by the User.

The components of the travel profile are:

- Start time, end time and duration of each Trip
- Departure point, arrival point and route followed for each Trip
- Transport method used for each Trip
- Purpose of each Trip
- Role in every Trip (i.e. driver, passenger)
- Measurement of quality of every Trip
- Places visited ("Personal Places")
- Routes travelled ("Regular Trips")
- Answers to questions posed

In this way, the Service offers the User insight into his/her travel behaviour. Based on this behaviour the User is challenged to make other choices in his or her travel behaviour. The user can earn points while completing challenges. These points can be redeemed in a shop for discounts on products from local retailers.

The User will remain in control of what is being measured at all times. The User can switch off the measuring functionality (temporarily) at any time via the menu in order that certain routes or places are not measured, and these will not form part of the travel profile. As a result also no challenge progress can be achieved and rewards collected.

## **2. Licence**

- 2.1. The Licensor provides the User with the non-exclusive, non-transferrable right to use of the Service under the terms and conditions of these Usage conditions ('Licence').
- 2.2. Under no circumstances does the User have ownership rights over the Service.
- 2.3. As part of the Licence the User may:
  - a. Download, install and make use of, for personal use, the Service on a compatible device owned by or under the control of the User.
  - b. Receive and make use of updates to the Service as offered by the Licensor.
- 2.4. The Licensor retains the right to alter, delay, render unusable or unavailable, or remove the Service at any time and without prior notification.
- 2.5. The Licensor retains the right to deny the Licence to a User and to render use of the Service impossible or to block it, in particular when (any one of) the conditions of article 4 are not complied with, without giving a reason.

## **3. Agreement to the processing of personal data**

- 3.1 The User agrees that the Licensor can maintain a record of the User's travel and any personal data needed to enable delivery of the Service. This registration is subject to the Personal Data Protection Act, with which the Licensor acts in accordance, through the Privacy Agreement that forms part of these Usage conditions.

## **4. Conditions for use of the Service**

- 4.1. The Service is for personal use. The Service or its components may not be exploited, sold, lent, rented, distributed or made available to third parties for commercial purposes in any way.
- 4.2. The User must own or control the use of a compatible device on which the Service will be installed. If the User sells, leases, lends or in any other way makes his device available to a third party, the User must ensure that the installed Service is not used by the third party.
- 4.3. The User must be over the age of 16 or alternatively have the consent of their parents or guardian to be able to use the Service.
- 4.4. Before first use, the User must read the Mobidot Privacy Agreement.
- 4.5. The Service may not be used for illegal purposes or other unauthorised activities, such as violating the rights of third parties.
- 4.6. The Service may not be used to locate other individuals.
- 4.7. It is not permitted to dismantle, reverse engineer, hack, alter or in any way incorporate, integrate or combine personal software, products or services with the Service or any of its components.
- 4.8. It is not permitted to copy the Service and in particular the App, unless copying forms part of the normal use of the Service (such as making a backup).
- 4.9. The User may not endanger the integrity of the Service and the safety of underlying or associated computer systems and networks, either through allowing access to intruders through the smartphone, by introducing viruses or other threats, by disproportionate or unreasonably large usage of the Service or its infrastructure, or by disrupting or damaging the working of the Service through the use of a computer programme, routine, file or device.

## **5. Costs**

5.1 The Licensor offers the Service to the User free of charge. However, in order to use the Service, the use of a mobile phone and data services from a mobile operator and/or other service providers will be required, including, but not limited, to an Internet connection. The Licensor is not responsible for the costs of such services.

## **6. Guarantees and limited liability**

6.1 The Licensor gives no guarantee that the details and/or derived details and information, as measured by the Service, are correct or that the Service satisfies the demands or wishes of the User or is compatible with the User's device. The Licensor also does not guarantee that the Service will operate without interruption, does not contain faults or omissions or that faults or omissions in the Service will be remedied.

6.2 All risks regarding the downloading, installation, use and operation of the Service remain with the User.

6.3 No written or oral information or advice provided by the Licensor shall constitute a guarantee for the Service.

6.4 The User is at all times responsible for his/her activities and his/her conduct while using the Service.

6.5 The Licensor cannot be held responsible for damage suffered in the widest sense of the word:

a) in connection to the use and operation or even mere non-availability of the Service or associated data products, except in cases of wilful neglect or intent.

b) in relation to missing, inaccurate or faulty measurement details or related derived data as decided by the Service.

c) in relation to the malfunctioning of devices as a result of, for instance, installation or battery use as a result of using the Service.

6.6. No rights can be derived from the use or non-availability of the Service.

## **7. Indemnification**

7.1 The User agrees to indemnify the Licensor and to defend him for and against all claims, liabilities, damage, costs and for costs, including legal costs, that may arise from use of the Service or violation of the Usage conditions by the User.

## **8. Duration and termination**

8.1 Both the Licensor and the User have the right to terminate the Service. In such an event the Licence will lapse and this contract will be ended.

8.2 The Licence, and with it the right to make use of the Service, is automatically terminated in the event of violation of the Usage conditions by the User.

8.3 If the Service is terminated, the User must destroy or delete all copies of the App in his/her possession. In this way the working of the Service will cease. If the User requires that his/her Account and associated personal details are removed they can contact the Licensor on [support@mobidot.nl](mailto:support@mobidot.nl) in which case all personal details will be removed within one month.

8.4 In the event that the Licensor terminates the service due to a violation of the Usage conditions, it is not permitted to download, install or operate the Service again unless agreement has been expressly received.

## **9. Ownership Rights**

- 9.1. All intellectual property rights in relation to the Service remain with their respective owners. The User has the right of use and in no circumstances receives ownership of (any part of) the Service.
- 9.2. The Service, including all applications, are protected by copyright. All rights not expressly granted in these conditions are reserved. The unauthorised reproduction, transfer, distribution or storage of part or all of the content, in any way, without the previously granted permission of the Licensor, is not permitted.
- 9.3. SMART is a product name of the Licensors. Other product names and company names used in the Service may be trademarks belonging to their respective owners. By making the Service available, we do not grant any licence or rights to use the brands used within the Service.
- 9.4. The Licensor has the right to assign or otherwise transfer its rights and/or obligations under this Usage agreement to a third party.

## **10. Amendments**

- 10.1. The Licensor retains the right to amend these Usage conditions. The Licensor shall communicate these amendments in a timely manner to the User via the Service or other online channel.
- 10.2. In the event that the User does not agree with or accept the amended Usage conditions, the User must terminate the Service before the amendments take effect.

## **11. Alternative provisions**

In the event that any clauses (or part thereof) of the Usage conditions become invalid, illegal or inapplicable by law, the other clauses or parts thereof shall continue to be valid and applicable. The Licensor shall replace any illegal, unlawful or inapplicable clauses with an effective and practicable clause that comes closest to representing the economic intent of the invalid clause. The same applies in the event of an omission.

## **12. Authority and dispute resolution**

These Usage conditions are governed by and interpreted in accordance with Dutch law under exclusion of international private law. The judge in the Almelo district is exclusively competent to take cognisance of any disputes that may arise from use of the Service.

## **14. Contact Information**

If you have any questions regarding the Usage conditions of the Service, you can contact: Mobidot B.V.:

Mobidot B.V. is a Dutch company and innovative specialist in the measurement and influencing of personal travel behaviour through the smartphone.

Website: [www.mobidot.nl](http://www.mobidot.nl)

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