

Nedap Now New Zealand Terms Of Use

For Customers and Users

1. ACCESS

- 1.1 **Agreement:** Nedap NZ Limited (“**Nedap**”) has entered into a Customer Agreement (“**Agreement**”) with the customer (“**Customer**”) in relation to the purchase and use of specific hardware products (“**Products**”) and related software (“**Software**”).
- 1.2 **Software:** The Software is made available to the Customer on a software as a service basis, for the term of the Agreement (“**Term**”). The Products may contain preinstalled firmware (“**Firmware**”).
- 1.3 **License:** In the Agreement, Nedap has granted limited subscription licenses to its Software to the Customer and to those officers, employees and independent contractors that the Customer grants access to using the tools in the Software (“**Users**”). The Customer and Users are permitted to access and use the Software, to use the Software to process Customer Data and to use the Firmware as part of the Products to allow them to connect with, and transmit data to, the Software.
- 1.4 **Terms of Use:** Access and use of the Software by the Customer and each User is subject to the Agreement and these Terms of Use (“**Terms of Use**”). Obligations in the Agreement that apply to the Customer are deemed to also apply to Users. Users have different levels of access and use rights in relation to the Software, as set out in the Software documentation (“**Documentation**”).
- 1.5 **Agreement:** If a User checks a box indicating acceptance of these Terms of Use as part of an account setup process as part of the Software, or otherwise indicates acceptance or agrees to be bound by these Terms of Use, by logging into the Software, or otherwise using the Software, each such User (“**You**”, “**Your**”) agrees directly with Nedap to be personally bound by these Terms of Use.
- 1.6 **Suspension or termination:** You agree that Nedap and/or the Customer can suspend or terminate Your access and use of the Software (or any part thereof) at any time if:
- (i) You breach these Terms of Use or any of the Customer’s obligations in the Agreement owed to Nedap, or Nedap reasonably suspects that You have, intend to or are likely to, breach, these Terms of Use or any of the Customer’s obligations in the Subscription Agreement; or
 - (ii) the Agreement expires or terminates.

2. USE RESTRICTIONS

2.1 Restrictions: You agree:

- (i) not to rent, lease, lend, sell, timeshare, redistribute, sublicense or allow access or use of, all or any part of the Software and/or Products, or any content or data contained on or in the Products and/or Software, including the Documentation, or the Firmware. You must not make the Software available as part of any application service provision, software as a service or outsourcing;
- (ii) except to the extent expressly permitted by applicable law, not to copy, decompile, reverse engineer, disassemble, reproduce, translate, adapt, vary or modify, attempt to derive the source code of, decrypt, or create derivative works of, all or any part of the Software or any content or data contained on or in the Software or any Firmware;
- (iii) not to access or use the Products and/or Software for any purpose other than for the Customer’s reasonable business purposes and as contemplated by the Documentation;
- (iv) ensure that any usernames, passwords, or other user credentials provided to You in respect of the Software are only used by You, are not shared with any other person (including service providers), and are kept secure and confidential;
- (v) not access, or attempt to access, any part of the Software and/or Products (including Firmware) that You are not permitted to access, or to circumvent any technological security or other rights based access system;

- (vi) not develop or use any software that works in conjunction with the Products and/or Software, for example a bot, screen scraper, API's or similar, unless provided by Nedap;
- (vii) not to use Products and/or Software for or in connection with a service bureau operation without the prior written consent of Nedap;
- (viii) not to use the Software to send bulk emails to people that have not expressly consented to the same;
- (ix) not upload any content or data to the Software, or use the Software to disseminate data, that is untrue, incorrect, incomplete, unreliable or malicious, or that is, or links to any content that is, unlawful, hateful, abusive, defamatory, obscene, discriminatory, or malicious (including any executable code), or that incites the same or similar behaviour;
- (x) not upload any data to the Software that You have no authority to upload, that You are not permitted to upload or that breaches any applicable laws or third party rights;
- (xi) not use the Software for any unlawful or illegal purpose or activity;
- (xii) not use the Software for the purpose of building a competitive or similar product or service, or to copy its features or user interfaces.

2.2 **Notice:** You must immediately notify Nedap in writing if You breach these Terms of Use, or become aware of any unauthorised use of the Products (including Firmware) and/or Software.

2.3 **Removal:** Nedap may delete, quarantine or modify any data, or other content, uploaded or input into the Software in breach of these Terms of Use or the applicable Agreement, and Nedap will not be liable to the Customer, User or other third party for any such actions.

2.4 **Compatibility:** Nedap may determine the Products and/or Software's compatibility with any device, software (including browsers) or operating system from time to time. Nedap may update compatibility requirements, software (including browsers) requirements, minimum operating system requirements and deem any version of the Products and/or Software end of life, and cease to make it available to You, from time to time in accordance with the Agreement. Nedap may also bring any Support for the Products and/or Software to an end, and terminate it from the Agreement, in accordance with the requirements set out in the Agreement.

2.5 **Service authorisations:** You acknowledge that the Products and/or Software may rely on the Products and/or Software having access to third party software and services licensed by the Customer, and You agree that if any such required access is restricted or removed, then the operation of the Products and/or Software may be significantly restricted.

3. SOFTWARE HOSTING AND DATA LOCATION, DISASTER RECOVERY AND BACKUP

3.1 **Software hosting location:** The Software, and any data input into the Software, may be located on hardware owned, leased or otherwise made available for use (including via hosting arrangement), by Nedap, and may be located anywhere in the world, as determined by Nedap from time to time.

3.2 **Internet access:** For the avoidance of doubt, You are responsible to ensure a high speed, robust and reliable internet connection, with sufficient bandwidth, is available for You to connect to the Software, at Your cost, and shall ensure that it is using hardware and internet browser software that is sufficient to comply with the Documentation.

3.3 **Security:** Nedap will use reasonable endeavours to implement IT security measures regarding the Products and/or Software and its data, which are in accordance with industry standard practice

3.4 **Backup policy:** Nedap shall implement reasonable backup policies, requiring backups of the Software and its data to be undertaken on a regular basis. These backups are stored by Nedap using online backup services, which may be supplied by third parties.

3.5 **Disaster Recovery:** Nedap will use reasonable endeavours to ensure any third party engaged by Nedap to host the Software and its data have robust disaster recovery and business continuity processes in place.

4. SECURITY AND DATA TRANSMISSION

- 4.1 **Access precautions:** You must take your own precautions to ensure that the process which you employ for accessing the Software does not expose You, Nedap and its data, to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system.
- 4.2 **Virus risk:** Nedap does not warrant that the Products and/or Software or its data, or any linked site, is free of viruses, malicious computer code or other interference. Nedap do not accept responsibility for interference or damage to Your computer system which arises in connection with your use of the Products and/or Software or any linked site, or any loss of data.
- 4.3 **Availability:** Nedap do not warrant that the Products and/or Software will be always available, free from bugs, errors, malfunctions, or other failures. Access and use of Products and/or Software will be temporarily suspended from time to time for maintenance purposes.
- 4.4 **Transmission:** Unfortunately, no data transmission over the internet can be guaranteed as totally secure. Whilst Nedap will use reasonable endeavours to protect such information, Nedap does not warrant and cannot ensure the security of any information which the Customer, or the Products, transmit to Nedap or the Software. Accordingly, any information that is transmitted to Nedap is transmitted at the Customer's and Your own risk. Nevertheless, once Nedap receives Your (or the Products) transmission, Nedap will use reasonable endeavours to preserve the security of such information.

5. INTELLECTUAL PROPERTY

- 5.1 **Data ownership:** Nedap shall own all data associated with the operation, performance and use of the Software. The Customer shall own all data input into the Software by or on behalf of the Customer, or by You, except that information which is Your personal information (which you retain).
- 5.2 **Data licence:** You grant to Nedap a perpetual, worldwide, non-exclusive, royalty free license to use, modify, store, disclose and sublicense any and all such data, including any personal information, to the extent necessary to:
- (i) provide the Products and Services;
 - (ii) to train any of Nedap's artificial intelligence models or products;
 - (iii) to update and improve the Products and/or Software;
 - (iv) to create new products and services;
 - (v) to supply any goods or services the Customer or You have requested;
 - (vi) for the purpose of monitoring compliance with this Agreement and for statistical purposes; and
 - (vii) to comply with its obligations, and to enforce its rights, pursuant to this Agreement or applicable law.
- 5.3 **Further data licence:** In addition, You grant Nedap a perpetual, worldwide, non-exclusive, royalty free license to use, modify, store, disclose and sublicense any and all data that you upload or input into the Software, excluding personal information or provided that such personal information is aggregate and anonymised, for Nedap's internal and external commercial purposes (including connecting to other third party's systems and products for exchanging data and for benchmarking purposes). If You do not own the data, You must ensure that your right to use the data is sufficiently broad to grant the licenses set out above.
- 5.4 **Ownership:** All intellectual property rights in and to Products and/or Software, including all improvements and modifications thereto, remain owned by Nedap and its licensors at all times.
- 5.5 **Restrictions:** You shall not:
- (i) use, modify or otherwise alter Nedap's (or its licensor's) intellectual property, except as expressly permitted by this Agreement;

- (ii) affix any other, tamper with or remove, any markings, patent numbers, trademarks or other indication of the source of origin placed on any Product or Software; or
- (iii) damage or otherwise endanger Nedap's intellectual property rights; and/or
- (iv) register any patent or trade mark involving, based upon, or relating to, Nedap, or any of the Products and/or Software.

5.6 **Infringement:** You agree:

- (i) not to cause or permit anything that may damage or endanger Nedap's (or its licensor's), intellectual property rights, or ownership thereof;
- (ii) to notify Nedap of any suspected infringement of Nedap (or its licensor's) intellectual property;
- (iii) to take such reasonable action as Nedap may direct at the expense of Nedap in relation to such infringement;
- (iv) to compensate Nedap for Your use of Nedap's (or its licensor's) intellectual property, otherwise than in accordance with this Agreement; and
- (v) not to use Nedap's (or its licensor's) intellectual property otherwise than as permitted by these Terms of Use and the Agreement.

5.7 **Monitoring:** Nedap is entitled to monitor the Customer's and Your use of the Software for the purpose of checking compliance with the Agreement.

6. WARRANTIES

6.1 **Warranties:** Nedap has provided limited and restricted warranties set out in the Agreement, for the Customer's benefit. Nedap does not provide any warranty in relation to the Products and/or Software directly to Users.

6.2 **Implied warranties:** You agree that You are in trade, and entering into these Terms of Use for a business purpose, and accordingly the Parties agree that:

- (i) except as expressly set out in these Terms of Use, the Products and Software are provided by Nedap (and its licensors, third party suppliers and affiliates) on an "as is" and "as available" basis, without any guarantee, warranty, condition or representations (whether express, implied by law, statute, trade custom or otherwise) including in relation to quality, merchantability, suitability or fitness for a particular purpose, ownership, compatibility or otherwise, in respect of the Products, Software and/or Services, whether pursuant to the Contract and Commercial Law Act 2017, Fair Trading Act 1993, applicable law or regulations, or otherwise;
- (ii) the implied terms, guarantees, covenants, and conditions in the Contract and Commercial Law Act 2017, Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1993, do not apply, and are excluded to the fullest extent permitted by applicable law; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention 1980) are excluded and do not apply; and
- (iii) this clause 6.2 is fair and reasonable in the circumstances, and that You have had the opportunity to obtain independent legal advice in relation to these Terms of Use prior to agreeing to them.

7. LIABILITY

7.1 **Indemnity:** You agree to defend, indemnify and hold Nedap harmless from any and all liabilities, costs (including full costs between solicitor and client), claims and demands, suffered by Nedap, or any claim made by any third party, arising out of or incidental to:

- (i) an allegation that the data You have uploaded to the Software, or its incorporation or use within the Products and/or Software, misappropriates or infringes a third party's intellectual property or privacy rights;
- (ii) Your acts or omissions that cause loss, damage or liability to Nedap; and/or
- (iii) Your breach of these Terms of Use or the Agreement.

- 7.2 **Exclusion:** Notwithstanding anything else in this Agreement to the contrary, in no event shall Nedap, Nedap's Personnel or Nedap's licensors be liable, however caused and whether arising under contract, warranty, tort (including negligence), statute, or any other form of liability, whether contemplated by this Agreement or not, whether arising out of or flowing from these Terms of Use or the Agreement or the supply or performance of the Products and/or Software or not, for any indirect, incidental, special, punitive or consequential damages, or any loss of income, business, sales, profits (whether actual or anticipated), loss of or corruption to data, or interruption of business.
- 7.3 **Data:** Nedap shall not in any circumstance be liable for any loss of data uploaded or input into the Software, any other data, or be liable for any loss, cost, expense or damage suffered or incurred by the Customer or You as a result of loss or reconstitution of data uploaded or input into the Software or any other data, whether caused by any defect, malfunction or non-performance of the Products and/or Software, or otherwise.
- 7.4 **Liability cap:** In the event that, notwithstanding anything else in these Terms of Use, Nedap is found liable for any damages, loss or liability in connection with these Terms of Use, such damages, loss and liability will, in aggregate, be limited to \$1,000.

8. GOVERNING LAW

These terms and conditions are governed by New Zealand law and the New Zealand courts have non-exclusive jurisdiction, except where the Agreement requires disputes to be resolved using an alternative dispute resolution process.

9. PRIVACY

Nedap and You agree to comply with the Privacy Act 2020. You must ensure that You have all necessary permissions, consents and approvals to upload Data to the Software, including personal information contained within the Data, and for that Data to be used as contemplated by these Terms of Use and the Agreement, and as set out in Nedap's privacy policy. Nedap collects, stores, uses and discloses personal information (including that personal information included within any Data) in accordance with its privacy policy, the current version of which is available <https://nedap.com/privacy-statement-disclaimer/>. Nedap may update its privacy policy from time to time, by updating the version set out at the above location. Details regarding the correction of personal information, contact details for Nedap's privacy officer and other information are set out in Nedap's privacy policy.

10. AMENDMENTS TO TERMS AND CONDITIONS

Nedap may amend these Terms of Use from time to time. Any amendments will be effective immediately when available at <https://nedap.com/privacy-statement-disclaimer/>. Your continued use of the Products and/or Software following such availability will be deemed to be your agreement to be bound by the amended Terms of Use.

11. CONTACT

If You have any queries in relation to these Terms of Use, please contact the Customer or Nedap Support.