CitNOW

CitNOW Terms of Use

Last Updated:
September 2017

www.**citnow**.com

English Version

Capitalised terms have the meanings defined in these Terms of Use or set out in the Order Form above.

"**Add-Ons**" means any additional service options which you may add to a Subscription from time to time in accordance with these Terms.
"**Content**" the moving images, still images, audio, graphics, text and other information created by You and uploaded via the Software to the Online Service.
"**Dealer Group**" means a company operating multiple Retailers.
"**Fees**" means the Set Up Fees and Monthly Fees set out in the Order Form.
"**Minimum Term**" means the minimum length of a Subscription, measured from the Contract Start Date or the Service Live Date as applicable and which shall apply to all subsequent renewals.
"**Online Services**" means the customer dashboard and reports as described by the CitNOW Online Services Factsheet.
"**Order Items**" the individual items listed on the Order Form.
"**Policies and Procedures**" the various factsheets and policy documents provided to You or made available to You and as updated by us from time to time in accordance with these Terms of Use.
"**Service Live Date**" means the date you upload a customer video to your customer dashboard.
"**Retailer**" the franchised dealer(s) identified on the Order Form.
"**Software**" the CitNOW video application installed on your device.
"**Subscription**" access to the Software and Online Services subject to payment of Monthly Fees and the particulars set out in the Order Form.
"**We**" refers to CitNOW Benelux B.V..
"**You**" refers to the party named on the Order Form
("**our**" and "**your**" should be interpreted accordingly).

If you are a Dealer Group, you are responsible for ensuring the Retailers in your group are aware of and comply with these Terms of Use (including the applicable Policies and Procedures) and shall, in particular, draw the Retailer's attention to their obligations regarding privacy and consent. You shall remain principally liable for each of your group Retailers compliance with these Terms of Use, regardless of whether you pay the Subscription Fees on their behalf or the Retailer makes payment to us directly.

1. Contract formation

1.1

We will supply the Order Items in accordance with the Order Form, these Terms of Use and the applicable Policies and Procedures (available to view on our website).

1.2

By signing an Order Form (or giving us other form of express written authority to proceed) you agree to purchase the Subscription(s) to CitNOW and to pay the Fees for the Order Items, as set out in the Order Form subject to these Terms of Use. Your Subscription will begin on (i) the Service Live Date or (ii) the Contract Start Date listed in the Order Form (with the Contract Start Date on the Order Form taking priority).

1.3

If you are a Dealer Group ordering Subscriptions on behalf of the Retailers in your group, the Minimum Term will apply to your initial Subscription, with all subsequent Subscriptions entered into by you on behalf of the Retailers in your group co-terminating with the initial Subscription Minimum Term end date.

1.4
You may order Add-Ons by giving us express written instruction (email will be accepted). If you order Add-Ons for a Subscription, the term of the Add-Ons will co-terminate with the Subscription to which it applies.

2. Use of CitNOW

2.1
For the duration of your Subscription, we grant you the right to use CitNOW.

2.2
Use of CitNOW is subject to the following restrictions: (a) you shall not reverse engineer, decompile or disassemble the Software except to the extent permitted by law; (b) you shall not examine any part of CitNOW for the purpose of developing a competing product, and nor shall you permit any third party access to CitNOW for this purpose.

2.3
We are the owner or licensee of the patent, copyright, trademarks, trade secrets and all other intellectual property rights that subsist in the Software, Online Services and training material to provide CitNOW. Title to the Software and the Online Services and the CitNOW brand shall remain vested in us or our licensors. Any rights not expressly granted herein are reserved to us.

2.4

If you provide us with any software, material or other documentation for us to use as part of our provision of CitNOW ("Client Material"), you will ensure we have the necessary rights to use such Client Material and You shall defend and settle any claim made against us alleging that our use of Client Material infringes the intellectual property rights of a third party.

2.5

You are solely responsible for the Content and for seeking consent from any individuals who may appear within the Content. You agree to defend and hold us harmless against any claim by any third party alleging that Content uploaded by You that breaks regulations or is illegal, defamatory or infringes any third party's rights.

2.6

You agree to comply with all applicable laws and regulations in relation to your business and your use of CitNOW, including but not limited to all applicable financial conduct regulations.

2.7

CitNOW enables the Content to be viewed and distributed online. In the event Content created by You is distributed beyond our control, You agree that we have no liability in respect of such distribution.

2.8

We shall provide you with Online Services in line with our Online Services Factsheet. You will not provide access to the Software or the Online Services to any third party without our express written consent.

3. Payment of fees

3.1

Unless set out in the Special Terms, Your first invoice will be sent following the Service Live Date or the Contract Start Date (whichever is applicable) and will contain Fees for the Order Items listed on this Order Form. Invoices for Monthly Fees will be sent at the same time each month thereafter.

3.2

Fees, together with any applicable taxes, shall be paid in accordance with the payment terms set out on the Order Form.

3.3

We may suspend your access to CitNOW without notice if payments are not made.

3.4

Your Subscription is for the current version of CitNOW as at the date of your Order Form. After the Minimum Term, We may adjust our Fees to reflect updates and developments to CitNOW which we will make available to you. We will give you no less than three (3) months notice in writing (to include email) of any such increase, provided that we may only increase Fees once in any Minimum Term period

4. Term and termination

4.1

Subject to Clause 1.3, each Subscription shall, unless terminated in accordance with clause 4.2, continue for the Minimum Term. Upon expiry, the Subscription shall automatically renew for further Minimum Terms, unless either party gives three (3) months written notice prior to the initial Minimum Term or the then current Minimum Term that it does not wish to renew.

4.2

Either you or we may terminate your Subscription at any time if the other party (a) commits a material breach of these Terms of Use and, in the case of a breach capable of remedy, fails to remedy it within thirty (30) days of being asked in writing to do so by the other party; or (b) becomes insolvent, or bankrupt, or enters into any voluntary arrangement with its creditors, or ceases or threatens to cease to carry on its business.

4.3

For Dealer Groups, we recognise acquisitions and divestments may occur from time to time and will work with you to agree the most appropriate course of action which may result in assignment or termination of the affected Subscription. You agree you shall not unreasonably request termination of a Subscription in such circumstances.

4.4

If your Subscription is terminated for whatever reason, any arrears of Set Up Fees or Monthly Fees due as at the date of such termination shall be payable immediately by you.

4.5
On termination You, or if you are a Group Retailer your Retailers, will no longer be able to access your Content via the Online Services. Content may be retrieved as outlined in our Data Protection Policy. Internet links to your videos may still work, but we cannot guarantee so.

5. Updates and technical support

5.1
Subject to clause 6, during your Subscription we will make available to you technical support in accordance with the applicable support Policies and Procedures.

6. Warranty

6.1
We warrant that all elements of CitNOW will function in accordance with (i) the description on the Order Form (ii) the Factsheets (iii) the applicable Policies and Procedures as at the date of the applicable Subscription.

6.2
The warranty set out in clause 6.1 does not apply to conditions resulting from improper use, external causes, including service or modifications not performed by us, or from use other than as permitted under these Terms of Use. We do not warrant that the operation of CitNOW will be uninterrupted or error free.

7. Limitations and exclusions of liability

7.1

Nothing in these Terms of Use excludes or limits our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by our negligence (iii) fraudulent misrepresentation or (iv) any other liability that cannot be excluded by law.

7.2

Subject to clause 7.1, we will not be liable for any damages or consequent legal fees resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

7.3

Except as provided in clauses 7.1 and subject to clause 7.2, Our maximum aggregate liability to you for any cause whatsoever arising in connection with CitNOW shall not exceed the limits set out below:

7.3.1

in respect of liability for our breach of Clause 9.1 and subject to your compliance with your obligations under any applicable data privacy legislation, a sum equivalent to 500% of the aggregate Fees paid during the twelve months immediately preceding your claim; and

7.3.2
in respect of all other liability relating to our provision of Software and Online Services to you, a sum equivalent to 125% of the aggregate of the Fees paid and payable during the twelve months immediately preceding your claim.

7.4
Subject to clause 7.1, You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into a Subscription ("Misrepresentation") and We shall have no liability to You other than pursuant to the express terms of each Subscription.

7.5
Nothing in these Terms of Use and each Subscription shall exclude or limit our liability for any Misrepresentation made by Us fraudulently.

8. Confidentially

8.1
In the course of your Subscription, each of us may acquire confidential information that is of value to the other, in respect of the other party's business, technology and/or customers. You and we each agree to keep the other party's confidential information secret, to the extent permitted by law.

9. Data protection

9.1

We shall each comply with our obligations under any applicable data protection legislation (including but not limited to the Data Protection Act 1998, the General Data Protection Regulation 2016/679 as from time to time amended, extended, enacted or consolidated) and the CitNOW Data Protection Policy.

9.2

In the event of any third party claim against us arising from Your breach or failure to comply with your obligations in regard to relevant data protection legislation or the CitNOW Data Protection Policy, you agree to defend us and hold us harmless against any fines, claims, costs and damages that we might be required to pay to any third party by a court of competent jurisdiction or regulatory body.

10. General

10.1

Neither party shall be liable for any delay or failure in performing any of its obligation under these Terms of Use if the delay or failure is caused by factors outside the reasonable control of the party concerned.

10.2

If any provision of these Terms of Use is found to be unenforceable, the remaining provisions shall remain valid. No waiver of either party in the exercise of any right under these Terms of Use shall prevent such party from exercising that right in the future.

10.3

Without affecting the provisions of Clause 3.4, We reserve the right to make changes to these Terms of Use and/or the Policies and Procedures as may be required from time to time with reasonable prior notice. If we make any change that has the effect of materially reducing the functionality of CitNOW or which imposes additional obligation on You which You are unable to comply with, you shall be entitled to terminate your Subscription by providing notice to Us in writing without penalty, and any Monthly Fees paid by you in respect of the Subscription period after the date of such termination shall be refunded.

10.4

Your Subscription to, and our supply of, CitNOW under these Terms of Use is governed by Dutch Law and shall be subject to the exclusive jurisdiction of the Dutch courts. If you are a Dealer Group, you are responsible for ensuring the Retailers in your group are aware of and comply with these Terms of Use (including the applicable Policies and Procedures) and shall, in particular, draw the Retailer's attention to their obligations regarding privacy and consent. You shall remain principally liable for each of your group Retailers compliance with these Terms of Use, regardless of whether you pay the Subscription Fees on their behalf or the Retailer makes payment to us directly.