

# User Contract for RM Digital Services (01/01/2022)

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These terms of use form the basis of the contract signed between RUBBLE MASTER HMM GmbH, FN 316865d, Im Südpark 196, 4030 Linz, referred to below as "RM", and the Client for the use of RM's Digital Services, in particular the Software as a Service solution (SaaS) XSMART including mobile app, jointly referred to below as the "Software", as well as the XSMART database operated by RM (jointly referred to as "RM Digital Services").

XSMART is software that is browser-based, cross-platform and includes a mobile device app for monitoring mobile crushers, screens and other large equipment (referred to below as "machines") for processing mineral materials. It is used to support RM, RM's customers and authorised dealers in operating their machines for analysis, ongoing checks (monitoring, predictive maintenance) and quality assurance. This service also allows RM dealers, customers and users to take out an add-on contract for additional technical services and gain access to the XSMART database operated by RM, which they can use for themselves or make available to their own contract partners.

## 1. Scope of the Terms of Use, Definitions of Terms and Subject Matter of the User Agreement

**1.1.** All services provided by RM in connection with the software and the XSMART database are provided exclusively on the basis of these terms of use.

**1.2.** Authorised dealer: The authorised dealer is a company that sells RM machines to its customers and contractual partners and supports them in the ongoing maintenance and repair of machines as part of customer service and after sales service. For this purpose, when using the software, the authorised dealer is given access to the XSMART database to view the data of their customers' machines for service purposes. Unless explicitly stated otherwise in these terms of use, the same rights and obligations apply to authorised dealers as to customers.

**1.3.** Client: The client is a company that has purchased a machine through an authorised dealer or directly from RM. The client uses the software indirectly (via the authorised dealer) or directly and requires access to the XSMART database.

**1.4.** Driver: The driver operates one or more machines in the customer's fleet and uses the mobile app to support and optimise the operation of the machine. For this purpose, drivers receive their own login to the client's account. When using the software, the driver agrees to comply with the rights and obligations formulated in these terms of use to the same extent as the client themselves. The driver does not have access to the XSMART database.

**1.5.** Users: Contractors, clients and drivers together represent the users of the software. In cases where the provisions of these terms of use apply equally to dealers, drivers and the client, they are referred to collectively as users.

**1.6.** Account: Account of the authorised dealer or client, who is granted the possibility to independently create further logins for drivers or to have them created by RM.

**1.7.** Login: Login for the driver, created in the client's account and provided directly or indirectly to the driver. Drivers are not able to independently add additional logins or access the XSMART database.

**1.8.** Machine: Every RM machine that is XSMART-capable is pre-equipped with an IOT gateway (WiFi hotspot) and a SIM card. Activation of at least one of these two components is a prerequisite for using the software. The included SIM card is the property of RM.

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**1.9.** XSMART database: The XSMART database is hosted and operated by RM. The database features software that is used to collect machine data of the machines equipped with XSMART. The XSMART database provides the basis for analysis, monitoring and quality assurance when using machines. The database is the sole property of RM. Authorised dealers are given access for customer support purposes after signing a special agreement with RM. The XSMART database only displays the machine data relating to machines of the authorised dealer's clients.

Following agreement from RM, the client receives access to the XSMART database in order to be able to analyse and monitor its own machines beyond the real-time monitoring provided by the mobile app.

The XSMART database contains both historical and current machine data.

**1.10.** Machine data: RM only processes machine data for analysis, monitoring and quality assurance. RM does not process personal data. If the use of the software by drivers generates data that identifies or makes identifiable natural persons, the client must ensure that all necessary data protection requirements are met. The machine data generated is the property of RM.

**1.11.** Data connection SIM: If the SIM card of the machine is activated, it collects machine data from the machine when the Internet connection is active and sends it to the XSMART database.

**1.12.** WiFi data connection: If a device with the mobile app software establishes a connection to the machine through the IOT gateway (WiFi), real-time machine data is displayed in the mobile app of the software. While the mobile device is still connected to the Internet, the real-time machine data is transferred via the interface available in the software to the XSMART database, where it is structured and archived.

**1.13.** RM Digital Services: The software and XSMART database together constitute RM Digital Services.

## 2. Signing the Contract, Contract Period & Pricing Model

**2.1.** Use of RM Digital Services (software and/or access to the XSMART database) requires registration by the authorised dealer or client and acceptance of these terms of use. Once the contract has been signed with RM, the authorised dealer or client will receive a personal account for the software, which will enable them to use it and access the XSMART database as soon as a machine is put into operation.

**2.2.** If a test phase has been agreed between RM and the client, using RM Digital Services is free of charge for the duration of the test phase. At the end of the test phase, the client's test account becomes billable. If the client terminates the contract during the test phase, the test phase ends with no costs billed to the client.

**2.3.** A paid contract may be terminated by either party at any time at the end of a calendar year provided notice is given six months before end of the year.

**2.4.** RM reserves the right to terminate the contract prematurely for good reason - without setting a grace period - during the agreed term of the contract. Good reasons include default of payment, the opening of insolvency proceedings or the rejection of an application for insolvency due to cost-covering assets, the publication of content damaging to RM's business, misuse of RM Digital Services etc. as well as gross breach of contractual obligations.

**2.5.** Following termination of the contract, the client shall retain full access to the data stored in the XSMART database for their account and in the logins associated with their account for a period of two further calendar months. During this period, the client is entitled to back up the data. After this two-month period, the account will be deactivated.

**2.6.** Pricing Model: RM's pricing model is available to the client at any time at <https://www.rubblemaster.com/wp-content/uploads/2022/01/Preisliste.pdf>. If the client's account has been set up on behalf of or by an authorised distributor, RM shall invoice directly to the authorised distributor for the fees due under these Terms of Use for the client's use of the service. The authorised dealer is entitled to pass on the resulting costs to the client. However, the authorised dealer is obliged to pay the amounts invoiced by RM in

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due time, regardless of whether they recoup the costs from the client.

**2.7.** The fee agreed with RM will be invoiced by RM annually in advance on an ongoing basis and is to be paid by the client or authorised dealer in accordance with the payment terms agreed.

**2.8.** Invoices are issued electronically in all cases; the client waives the issue of a paper invoice.

**2.9.** Any claims made by RM can only be offset against claims that have been legally established or expressly acknowledged.

### **3. Rights and Obligations of the Client**

**3.1.** The client is entitled to create further logins in their account or to have them created by RM. RM is obliged to create and maintain the technical and organisational conditions necessary for the creation of logins.

**3.2.** The client may only provide a login to legal entities or natural persons. However, the client must ensure that no data relating to a natural person can be retrieved from the login by RM and that persons are therefore neither identifiable nor can be made identifiable in the XSMART database. If personal parameters are used that could indirectly or directly enable identification, the client must obtain the data subject's consent under data protection law in advance and fulfil all information obligations in accordance with Article 12 of the GDPR. The client is obliged to immediately forward to RM any revocation by a data subject (or other assertion of the data subject's rights).

**3.3.** The client is obliged to notify RM within 7 days of any change in its data relevant to invoicing. The client shall indemnify and hold RM harmless for any failure to provide such timely notification of changes.

**3.4.** The client must transfer to each driver the rights and obligations of these Terms of Use concerning the users of RM Digital Services and shall indemnify and hold RM harmless for subjecting the drivers to these Terms of Use as well as in relation to the fulfilment of all data protection requirements.

### **4. Obligations of the User**

**4.1.** Unless otherwise agreed, RM provides the RM Digital Services only. The user must create the technical, personnel and organisational conditions necessary for the use of these services, such as a suitable system environment or a permanent Internet connection.

**4.2.** RM reserves the right to modify or improve the software at any time and to adapt the RM Digital Services providing the changes do not result in any impairment of use for the users. This may result in changes to appearance, technical changes, changes to content or other changes. A right to request improvements or modifications exists for users only to the extent that the changes impair previous performance.

**4.3.** The user is obliged not to use RM Digital Services in a way that is abusive or illegal. Users shall indemnify and hold RM and all of its agents harmless from any and all adverse consequences resulting from any illegal, improper or otherwise detrimental use of the Software and the related services.

In particular, this also covers damages resulting from the user's incorrect provision of data and facts or from the violation of personal rights, copyright, data protection or other standards.

**4.4.** In the event of any other liability, the user is obliged to treat the access data to their account confidentially and carefully and not to pass them on to third parties under any circumstances. The user must inform persons to whom they provide their access data about the obligations contained in these Terms of Use.

**4.5.** The user is obliged to log out with their account after each use of the RM Digital Services and to log in again before each use in order to prevent misuse of their account in the event of loss or theft (including loss of theft of a mobile device).

**4.6.** The user agrees to indemnify and hold RM harmless for all consequences and damages resulting from such a loss, theft or disclosure of their login data or a loss, theft or disclosure of their mobile device while they are logged in to the software.

**4.7.** The user is obliged to make regular (at least once per week), back-up copies of the data and information they have stored in the XSMART database. RM is not liable for any

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adverse consequences and damages resulting from any loss of data that could have been prevented or minimised by making backup copies.

## **5. Default of Payment, Reminders and Blocking Access**

**5.1.** In the event of default in payment, interest on arrears in the amount of 9.2% above the base interest rate (rate specified in the Austrian Commercial Code) per year is deemed agreed.

**5.2.** In the event of non-payment despite a reminder, RM may temporarily suspend the provision of services and block access to RM Digital Services. Once the outstanding amount has been paid in full by the user, RM will unblock access. The right to terminate the contract on the part of RM in the event of default in payment as well as RM's ongoing claim to remuneration remains unaffected. Suspension of performance due to delay in payment does not entitle the client to premature termination of the contract.

**5.3.** RM is entitled to temporarily refuse the provision of services in whole or in part (by blocking access) if there is reasonable suspicion that the client, when using the service, violates laws or contractual obligations, regarding ensuring the operability of even only one service or the protection of third parties, or takes actions that entitle RM to immediately terminate the contract in accordance with these terms of use. This includes not only, but in particular, the violation of obligations under the data protection regulations or the lack of preconditions under the data protection regulations for the use of RM Digital Services.

**5.4.** Reasonable suspicion of illegal use and/or infringement exists in particular if RM is informed by courts, authorities and/or other third parties of such use. RM will immediately notify the user that access has been blocked and the reason for it. The block will be lifted as soon as the suspicion is removed and the conditions for this no longer exist.

**5.5.** The user cannot make any claims arising from justified blocking of access to the services.

## **6. Rights of Use & Machine Data**

**6.1.** The software is an online-based software as a service solution, usable with access to RM's web application or the mobile app, and providing access to the XSMART database where applicable. The software or data from the XSMART database is not transferred to users. RM grants

the client (including their drivers) and authorised dealers only a simple right of use for the software and/or right of access to the XSMART database, which is limited to the period of the contract and can only be sub-licensed by separate agreement.

**6.2.** Users are not permitted to use, or make available, distribute, sell or otherwise transfer, RM Digital Services in whole or in part, in particular generated machine data, beyond the rights expressly granted.

**6.3.** In the course of using RM Digital Services, every user has the possibility to analyse and monitor machines. RM is not obliged to log analysis results or evaluate monitoring results itself. In this context, RM has no duty to warn or provide information regarding the machines depicted by RM Digital Services.

## **7. Availability**

RM is obliged to provide the services in accordance with the agreement without any restrictions. Within this framework, RM guarantees a 97.5% availability of RM Digital Services over a calendar year average.

However, a completely error-free or uninterrupted system cannot be guaranteed for technical reasons alone. When calculating the contractual availability, cases of force majeure as well as periods of interruption of usability due to the interval-based maintenance and updating of RM Digital Services are not taken into account.

## **8. Liability**

**8.1.** Compensation for damages - with the exception of personal injury - is limited for each event causing damages to the individual client to the amount actually covered by RM's liability insurance for the respective event. If there is no liability insurance coverage, the compensation of damages for each event causing damage is limited to a maximum amount of € 25,000.

**8.2.** This maximum amount includes all claims existing against RM due to defective performance and/or other breach of contractual obligations, such as, in particular, for damages and price reduction.

**8.3.** Unless provided otherwise by special agreement or by law, RM's liability for contractual or statutory claims, in particular for

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indirect and consequential damages, consequential harm caused by a defect, damage to property, loss of profit, savings or profits not realised, loss of interest, lack of economic success, positive breach of contract, error in signing contract, and damages arising from third-party claims shall be excluded, unless the client proves RM's intent or gross negligence.

**8.4.** Liability for adverse consequences and damages caused by RM due to slight negligence is excluded, unless personal injury is involved. Furthermore, liability for adverse consequences or damages that are not typically foreseeable when using the software is excluded.

**8.5.** RM is not liable for any adverse consequences or damages suffered by users or clients to the extent that machines managed with the use of RM Digital Services are damaged or otherwise rendered unusable as a result of loss of the ability to use RM Digital Services, technical failures, loss of data, unauthorised access by third parties, or any other cause related to RM Digital Services.

**8.6.** RM assumes no liability for the suitability of RM Digital Services for the user's intended purpose. The same applies to merely deviations in appearance that do not impair the proper use of the software.

**8.7.** RM is not responsible for disruptions to performance due to force majeure, in particular the failure or overload of global communication networks. Events of force majeure are deemed to include, in particular, all effects of prevention or avoidance that are beyond RM's control.

**8.8.** Claims for damages must be asserted in court within 6 months at the latest from the date of knowledge of the damages and the party causing the damages, otherwise they will be declared void.

**8.9.** The limitations and exclusions of liability also include claims against employees, organisations, representatives and subcontracted agents of RM due to damages caused by them to the user.

## 9. Copyright, Confidentiality and Data Protection

**9.1.** RM reserves all rights, in particular trademarks and copyrights, to the entire content of

RM Digital Services, including but not limited to source codes, data, trademarks, logos, texts, graphics, photographs, layout and music. Providing use is not compulsorily permitted by law, any use of contents of RM Digital Services beyond the contractual performance obligations, in particular storage in databases, duplication, dissemination or editing, requires RM's express written permission.

**9.2.** The user is obliged to keep secret all confidential information that becomes known to them in the course of using RM Digital Services and not to disclose it to third parties. This includes, in particular, information about the functionality of RM Digital Services and the scope of the services offered by RM in this context.

## 10. Changes to the Terms of Use

**10.1.** RM is entitled to change these terms of use. This may be done not exclusively, but in particular, to incorporate changed legal regulations or to include new / changed services.

**10.2.** The user will be informed in written form of any planned changes no later than two months before the proposed date of the new terms of use taking effect, with reference to the sections of the terms affected. The changes will be deemed approved by the user unless the user objects to the changes in writing before the proposed effective date.

RM will also point this out to users in the information about the changes. The deadline for the user's objection is only met if the objection is received by RM within the deadline.

## 11. Non-solicitation Agreement

**11.1.** The user is not entitled to entice away and/or employ RM's employees or subcontractors during the contract period and for twelve months after the contract has been terminated. Employment being offered to the employee or subcontractor by a company affiliated under company law will also be deemed equivalent to employment with the user. (e.g. parent company, subsidiary or sister company)

**11.2.** For each case of violation of this non-solicitation agreement, the user shall pay RM a contractual penalty of € 50,000 regardless of fault, even if it was only an attempt to offer employment. RM reserves the right to claim for injunctive relief resulting from this agreement

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as well as claim for damages exceeding the contractual penalty in addition to payment of the contractual penalty.

## **12. Conclusive Provisions**

**12.1.** This contract is governed by Austrian substantive law excluding the applicability of the UN Convention on Contracts for the International Sale of Goods as well as international referral norms.

**12.2.** Place of performance and place of service is the registered office of RM.

**12.3.** If individual provisions of these terms of use are void or become void, ineffective or contestable, the remaining provisions remain unaffected. These provisions are replaced with valid and performable regulations most fitting to the intended business purpose. This also applies if there are any gaps in the contract.

**12.4.** For any disputes between the user and RM, the exclusive jurisdiction of the court that has jurisdiction for the place of performance is deemed to be agreed.