

## Terms of Use of XXImo GmbH

These Terms of Use will apply to the XXImo GmbH Mobility Services.

### Article 1. Definitions

The following terms have the following meanings in these Terms of Use:

Addendum:	The addendum to these Terms of Use;
Agreement:	The Agreement between the Customer and XXImo based on which XXImo provides Services for the Customer;
Card Company:	The issuer of the payment cards (XXImo FS);
Credit:	A credit paid by the Customer or Token Holder in advance to the Card Company in euro for using the Mobility Services;
Customer:	The legal entity or natural person, who acts while performing their professional activity or as a company and, who concluded an agreement with XXImo concerning the acquisition of the Service;
Management Platform:	The secure area of a website, on which the Customer can manage the use of the Mobility Services of the Token Holders;
Mobility Services:	Services, which are offered by the Partners;
Partner:	A partner, with which XXImo has reached an agreement concerning the acquisition of Mobility Services by the Customer;
Retailer:	A company or institution which accepts the Token as a means of payment.
Service:	The XXImo services with regard to the management and the financing of Mobility Services.
Terms of Use:	These General Terms and Conditions, irrespective of the format, in which they are made available;
Token:	Payment and / or identification means issued by or on the request of XXImo, such as but not limited to a card, token, payment option in app, payment card and / or public transport chip card;
Token Holder:	The natural person, who is named by the Customer and is entitled to use the components of the Service and the Mobility Services with the Token;
Web Portal:	The secure area of a website, based on which the Token Holder and the Customer can download and view reports and/or use Mobility Services;
Website:	The website <a href="http://www.xximo.com">www.xximo.com</a> ;
XXImo:	XXImo GmbH, entered in the register of companies of the County Court Frankfurt am Main under the number 105715, having its business address Raiffeisenallee 5, 82041 Oberhaching;
XXImo FS:	XXImo Financial Services B.V ., a licensed electronic money institution ( <i>elektronisch geldinstelling</i> ) within the meaning of art. 1:1 Dutch Financial Supervision Act ( <i>Wet op het financieel toezicht</i> , registered in the commercial register of the Chamber of Commerce under number 84501901.

### Article 2. Application of the Terms of Use and Agreement

- 2.1 These Terms of Use shall apply to all offers and Agreements, which refer to the provision of Services by XXImo for the Customer, irrespective of whether they exist orally, in writing, electronically or in another format. These Terms of Use shall also apply to subsequent Agreements between XXImo and the Customer insofar as not explicitly otherwise agreed in writing.
- 2.2 All offers created by XXImo are non-binding and can be revoked by XXImo at all times before conclusion of an Agreement. Agreements shall be concluded if XXImo has accepted the registration of the Customer by a written or electronic confirmation. XXImo is entitled at all times to reject a Customer without stating any reasons.
- 2.3 The Customer is not entitled to assign the rights and obligations arising from the Agreement to a third party if not explicitly agreed otherwise between the Customer and XXImo.

### Article 3. Services

- 3.1 For the term of this Agreement XXImo shall make the Services available within the agreed period of time and in line with the agreed specifications. The Services comprise – however not only – the access to the Web portal and to the Management Platform as well as the provision of the agreed Tokens.
- 3.2 XXImo guarantees that the Customer shall receive access to the Management Platform and to the web portal and can acquire the Mobility Services from the Partners using the Token. XXImo cannot be held liable for acts or thus ensuing defects of the Partners, of the Card Company and of the Retailers.
- 3.3 Delivery times are on the whole subject to the reservation of the timely self-delivery.

#### **Article 4. Management Platform and Web Portal**

- 4.1 In connection with the Services XXImo will make a URL for the Management Platform and the web portal, an access code and a password available to the Customer, with which the Customer and/or Token Holders shall receive access to the Management Platform and to the Web portal.
- 4.2 The Customer can manage his own use of the Token and the Mobility Services as well as the use of the Tokens and Mobility Services of the Token Holders via the Management Platform. The Customer can also grant the Token Holders access to a secure area of the Management Platform by allocating them an access code and a password. Token Holders can use this access in order to view their use of the Mobility Services. The access codes and passwords are strictly personal and to be treated confidentially.
- 4.3 The Token Holder can use Mobility Services of the Partners via the Web portal. Supplementary Terms of Use of the Partner concerned shall apply to the use of these Mobility Services. The Terms of Use of the Partners are available for viewing and downloading on the Website.
- 4.4 The Customer guarantees that only he and the Token Holders use the Management Platform and the Web portal for acquiring the Services for its own and internal use and that they comply with all relevant Terms of Use. The Customer shall be liable for the entire use of the Management Platform, the Web portal and the access code and password use – as well as their costs – which have been allocated to it and the Token Holders; it is obliged to treat the access code(s) and the password(s) cautiously and to protect these against unauthorized use.
- 4.5 XXImo does not guarantee that the Management Platform and the Web portal can be used without interruption at all times.

#### **Article 5. Token application and use**

- 5.1 The Customer can apply for Tokens for its Token Holders at XXImo via the Management Platform. It must fully complete a corresponding application form for this purpose.
- 5.2 The Customer can apply for a prepaid function for the corresponding Token via the Management Platform. This application will be sent directly to the responsible Card Company. The Card Company is always entitled to reject an application for a substantiated reason.
- 5.3 If the Card Company approves the application the Customer will conclude an agreement with the Card Company concerning the receipt of the prepaid function. The General Terms and Conditions of the Card Company will apply to this Agreement. The General Terms and Conditions of the Card Company are available for viewing and downloading on the Website and are moreover enclosed in the Addendum. The Customer agrees to the contents of the Business Terms, their applicability to the Agreement with the Card Company and the use of the prepaid functions on the Token.
- 5.4 After conclusion of the Agreement between the Customer and the Card Company XXImo will issue the Token based on the data transmitted by the Customer and the Card Company and will hand these over to the Customer if not explicitly otherwise agreed in writing. The Token is and shall remain the property of the Card Company.

#### **Article 6. Postpaid Token**

- 6.1 The Token shall be issued on a postpaid basis, which means that the Customer shall pay the use and all other costs related to the use of the Token the month after the actual Service have been used.
- 6.2. For the provision of the Services, the Customer pays the fees in accordance with the Agreement and Art. 12 of these Terms of Use. Unless agreed differently in the Agreement, the due fees are excluding
  - (a) VAT and other turnover tax and expenses; and
  - (b) other incidental or one-off costs as may be agreed between the Parties.
- 6.3 The Customer owes XXImo the fees for the Services even after termination of the Agreement until the moment at which it returns the Tokens.
- 6.4 The Customer shall not apply a discount to, suspend payment of or set-off any amount that it owes or will owe to XXImo under the Agreement or as otherwise agreed between the Parties unless such retention or set-off is based on counterclaims which are undisputed or determined by a non-appealable court decision.
- 6.5 If any amount owed by the Customer as stipulated in Article 6.3 has not been received by XXImo on the bank account as indicated on the respective invoice by the due date at the latest, the Customer shall, without any notice of default being required, be in default. XXImo may charge an interest of 9 percentage points above the base rate p.a. on the outstanding amount from the due date of the invoice until the date of receipt of payment in full. Customer shall indemnify XXImo for all necessary costs, judicial and/or non-judicial, that XXImo has incurred for the collection of the due amounts.
- 6.6 If any amount owed by the Customer on the basis of the Agreement has not been paid by the due date at the latest, XXImo reserves the right to suspend the Services until all outstanding amounts (including interest and costs, particularly in accordance with Article 6.5) have been paid in full. The costs of suspending and reactivating the Services will always be borne by the Customer. XXImo shall not be liable for any damages Customer may incur resulting from the suspension of the Services by XXImo due to a default payment of Customer

#### **Article 7. Prepaid function**

- 7.1 The Token will only have a prepaid function if this has been agreed by the Customer and the Card Company.
- 7.2 In the event of a prepaid function the existing Credit must always feature the agreed minimum amount. The money will be collected from the agreed bank account in order to increase the amount on the Token if the balance is below the minimum. The Customer is obliged to grant the Card Company a SEPA direct debit mandate for automatic transfers. The Customer must additionally guarantee that the bank account, from which the Credit is automatically collected, has a sufficient balance. If no automatic collection can be carried due to reasons in the control of the Customer, for example owing to insufficient cover of the account, a fee of EUR 5.00 (five euro) will be charged to the Customer for administration costs.

#### **Article 8. Mobility Services**

- 8.1 By using the Token the Customer can order or acquire (for the Token Holders) the agreed Mobility Services from the Partners. A list with the Partners is available on the Website. XXImo is entitled to change the list with the Partners at all times. Changes can occur as a result of the termination of the Agreement between the Partner and XXImo. The Mobility Services and the Partners as well as possible changes will be announced on the Website.
- 8.2 The Customer shall always conclude an agreement concerning the Mobility Services – cf. Website – with the corresponding Partner. The General Terms and Conditions of the Partner concerned shall apply to this mobility agreement. XXImo keeps the General Terms and Conditions of the different Partners available on the Website for downloading for the purpose of information. XXImo cannot be held liable for the (non-)fulfilment of the Agreement by the Partners.

- 8.3 XXImo will invoice the Customer for the amounts owed by it for the Mobility Services acquired by it and its Token Holders. The Customer will pay the charged amounts directly to the Card Company by automatic transfer owing to a granted SEPA mandate.

#### **Article 9. Invoicing**

XXImo will send the Customer an invoice monthly via the Management Platform. This includes the following amounts:

- the amounts payable for the acquisition of the Mobility Services;
- the amounts payable for the acquisition of the Service.

The information kept in reserve at XXImo will be used for the invoicing.

The Customer is obliged to only claim a VAT refund once for any acquired Mobility service and in doing so, to rely only and exclusively on the invoice issued by XXImo. The Customer shall not claim a VAT refund twice for one and the same Mobility service.

#### **Article 10. Obligations of the Customer**

- 10.1 The Customer guarantees and shall ensure that all obligations ensuing from these Terms of Use and the Business Terms of the Card Company shall also apply to the Token Holder. Under no circumstances can the Customer assume obligations or grant guarantees, which go beyond the Agreement and the Terms of Use made available by XXImo. Upon request of XXImo the Customer will send a copy of the Agreement with the Token Holder (according to Subclause 4.6 of the Customer Agreement) to XXImo.
- 10.2 The Customer must forward all potential Token-related complaints of the Token Holders immediately to XXImo in order to discuss the measures, which are necessary for processing the complaint.
- 10.3 The Customer does not make any Tokens available to Token Holders, of which it knows or assumes that they participate in fraudulent practices; it obligates the Token Holders to take the necessary measures in order to prevent theft, loss, damages or fraud in conjunction with the Tokens.
- 10.4 The Customer takes care that all data and information (including up to date bank details) required for the provision of the Services are correct and complete and are provided within the terms specified by XXImo or the Card Company and in the agreed way to XXImo and the Card Company respectively and comply with the agreed (technical and legal) requirements.
- 10.5 In order to comply with legal and regulatory requirements the Customer will take care of providing the Ultimate Beneficial Owner of the Customer, the legal representative of the Customer and the following information of every Token Holder to XXImo FS:
- i. Complete first names
  - ii. Last name
  - iii. Place of Birth
  - iv. Date of Birth
  - v. Place of residence
- 10.6 The under article 10.5 mentioned information will need to be received by XXImo FS in a timely fashion, but in any case prior to the start of the Services provided to the Customer or Token Holder respectively.
- 10.7 The Customer declares that all the information that is provided based on this article 10 is up to date, complete and correct to the best of their knowledge.

#### **Article 11. Intellectual property rights**

The intellectual property rights to all Services (including the Web portal, Management Platform and Token), which XXImo makes available as agreed, shall remain with XXImo or the third party, from which XXImo received the right to make these (or a part of these) Services available to the Customer. During the term of this Agreement XXImo shall grant the Customer a simple and non-transferrable right to use the Services within its company and for the agreed goals.

#### **Article 12. Remuneration and payment**

- 12.1 For the provision of the Service the Customer shall owe XXImo the remuneration agreed in the Agreement. All remunerations owed towards XXImo are shown in euros – insofar as not explicitly stated otherwise – and without value added tax and other duties.
- 12.2 The Customer undertakes to grant a (continuous) SEPA direct debit mandate for an automatic collection for the remuneration, which it has to pay to XXImo with regard to the Agreement. If the automatic collection cannot be carried out due to reasons within the control of the Customer (for example – however not only – owing to missing cover), EUR 5 (five euro) will be charged to the Customer as an administrative expense.

#### **Article 13. Liability**

- 13.1 The liability of XXImo for damages, no matter for what legal grounds, is limited to wilful intent and gross

negligence. This shall not apply to the negligent breach of obligations which are essential for the contract (these are those, on the compliance with which the customer should be able to rely upon and the fulfilment of which makes the proper execution of the contract possible at all). XXImo's liability for the negligent breach of obligations which are essential for the contract is, however, limited to the foreseeable damages, which are typical for the contract.

- 13.2 The liability of XXImo owing to an injury to life, the body or the health shall remain unaffected by the aforementioned liability limitations as well as a liability according to the Product Liability Act.
- 13.3 Insofar as the liability of XXImo is excluded or limited this shall also apply to the personal liability of the bodies, employees and vicarious agents of XXImo.

#### **Article 14. Confidentiality**

- 14.1 During the term of the Agreement and for a period of 5 (five) years after termination the parties shall treat all confidential information, which they have received regarding the other party (the company of the party), confidentially. The parties shall also obligate their employees as well as third party contractors hereto in fulfilment of the Agreement between the parties.
- 14.2 Information shall be deemed as confidential from the moment, at which it is described as such by one of the parties.

#### **Article 15. Suspension**

XXImo is entitled to suspend the execution of the Agreement in full or in part if the Customer and/or Token Holder fails to comply with the obligations of these Terms of Use, which ensue from the Agreement.

#### **Article 16. Term and termination**

- 16.1 This Agreement is concluded by the parties for an agreed term; otherwise a term of 1 (one) year shall apply. After the expiry of the term the Agreement will be extended automatically by a term of 1 (one) year if it is not terminated by one of the parties with a period of notice of at least 6 (six) months to the end of the existing term.
- 16.2 Each party may terminate this Agreement extraordinarily and without notice if the other party fails to fulfil the essential obligations of the Agreement and this omission is not remedied within a reasonable deadline – after a proper written request in this respect.
- 16.3 XXImo is entitled to terminate the Agreement with immediate effect without this requiring a notification of default and without XXImo being liable for the damages, which are incurred towards the Customer as a result thereof, if
- the Card Company refuses to reach an agreement with the Customer;
  - the Customer files an application for insolvency, an application for insolvency is filed by a third party and is not withdrawn within two weeks, the insolvency proceedings are opened or an application is refused for the opening of the insolvency proceedings in the absence of sufficient assets
  - the company of the Customer is dissolved or closed.
- This shall apply irrespective of the right of XXImo to assert compensation for the suffered damages after the premature termination of the Agreement.
- 16.4 The termination of the Agreement will not release the Customer from payment obligations for a service, which was already provided by XXImo, if XXImo is not in default with regard to a certain service. Amounts, which XXImo invoiced before the termination already, which refer to the fulfilment of the Agreement, are due and payable immediately as of the date of the termination.
- 16.5 XXImo will be entitled to terminate the Agreement and/or to block (part of) and/or limit access to the Service(s) if a Customer or Token Holder restricts or impedes the processing of personal data by XXImo in any way, which includes the exercise of the rights granted to the involved parties under the General Data Protection Regulation, and such restriction or impediment affects data that is necessary to (i) ensure compliance with statutory obligations of XXImo, (ii) to provide the Service(s) by XXImo or other service providers or (iii) safeguard legitimate interests of XXImo, e.g. pursuant to Section 6 para. 1 sentence 1 lit. f GDPR.

#### **Article 17. Force Majeure**

- 17.1 If XXImo is prevented or may be prevented from or is delayed in the performance of any of its obligations under this Agreement caused by an event of Force Majeure, XXImo will notify the Customer as soon as reasonably practicable, of the event or circumstances constituting the event of Force Majeure, its or their likely duration, and of its obligations whose performance is thereby delayed or prevented.
- 17.2 XXImo shall be excused of the performance or punctual performance, as the case may be, of the obligations notified, for as long as the event of Force Majeure notified (or the effects thereof) continues. XXImo shall nevertheless use all reasonable endeavours to continue to perform its obligations and to minimise or eliminate the adverse effects of such event of Force Majeure with all reasonable dispatch and shall keep the Customer informed of material developments relating to such event of Force Majeure. The Customer shall use all reasonable endeavours to co-operate in taking such measures.
- 17.3 For the purpose of this Agreement, events of “Force Majeure” means any circumstance not within the reasonable control of XXImo and include, without being limited the following:
- a national strike, legitimate lock-out or any other industrial action or labour dispute by a third party, or by employees of the XXImo;
  - act of war (whether declared or undeclared), invasion, armed conflict, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, terrorism or the threat of sabotage or terrorism;
  - any act of state or other exercise of sovereign, judicial or executive prerogative by any governmental entity, expropriation or nationalisation

- act of god, epidemic, pandemic, plague, explosion, chemical or radioactive contamination or ionising radiation, lightning, earthquake, tempest, flooding, fire, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm, volcanic eruption and other unusual and extreme adverse weather or environmental conditions or action of the elements;;
  - problems with the Internet or server problems beyond XXImo's reasonable control which could not be reasonably prevented through due precautions, hacking, etc;
  - any shut down order, evacuation measure or investigation measure imposed by a governmental entity as a result of the occurrence of an accident or incident on the factory premises or in the immediate surroundings of the factory premises of XXImo.
- 17.4 If the concerned event of Force Majeure continues for more than 60 (sixty) calendar days, the parties agree that they will convene to decide how the affected obligations may be resumed. If parties fail to reach an agreement, and provided that the performance or punctual performance by the XXImo is still excused, either party may terminate this Agreement with prior written notice. This termination will take immediate effect.

#### **Article 18. Final provisions**

- 18.1 XXImo is entitled to assign or to dispose about it otherwise all receivables to which XXImo is entitled against the Customer to a third party - if necessary also as security. XXImo is not obliged to notify the customer of the assignment. The Customer already now agrees to the possible passing on of confidential information which is necessary for the enforcement of the assigned claim for the third party.
- 18.3 If one provision of these Terms of Use is invalid or is declared to be invalid, the other provisions of these Terms of Use shall remain in force.
- 18.4 The Terms of Use can be changed/supplemented by XXImo if such changes or supplements are required due to changes in law, case law or other or other circumstances and conditions underlying the Agreement. The change will be communicated to the Customer by e-mail or in another manner in a text form. If the Customer does not accept the change it may end the Agreement in writing with a period of notice of 30 days, however only with a deadline of 30 days after it has received the notification concerning the date upon which change becomes valid. This does not apply to amendments which modify the essential contractual obligations in their core and affect the equivalence ratio of performance and consideration.
- 18.5 The offers, cost estimates, Agreements and other legal acts concerning the provision of the Service by XXImo including this Agreement are solely subject to German law. Disputes between XXImo and the Customer owing to or in conjunction with offers, cost estimates, Agreements and other legal acts concerning the provision of the Service by XXImo will be decided by the exclusive courts of jurisdiction of Frankfurt am Main.

**ADDENDUM 1      Credit Card Conditions Card Programmes Europe**

**ADDENDUM 2      Prepaid Card Conditions Card Programmes Europe**