ScanCircle Partner Terms & Conditions

Definitions and specific terms & conditions

ScanCircle

- The developer and owner of the scan service, represented by Arnoud Klaren registered with the Chamber of Commerce in Rotterdam, The Netherlands under number 24329676.

Partner

- A party that has applied for the ScanCircle Partner Program. A candidate Partner has expressed their verbal or written intention to become a Partner.

End User

- A customer of the Partner or a visitor to its website or a visitor of the Main Environment.

Main Environment

- The general ScanCircle environment (www.scancircle.com) where End Users can perform scans. For support they are redirected to the Partners.

Partner Environment

- A standard environment on the ScanCircle web server where the Partner and End Users can view the scan results and can also perform scans. The Partner can configure its own data, logo, locations, advertisements, scripts, support options and other settings and can see the scans performed;
- The web address of the Partner Environment (partnercode.scancircle.com), contains the partner code chosen by the Partner, which must contain the company name or at least have a clear relationship with a Partner's trade name or website. Partner codes that are too generic, resemble those of other (candidate) Partners too much and/or are inappropriate may be refused. All this at the discretion of ScanCircle;
- The logo specified by the Partner must contain the company logo or have at least a clear relationship with a Partner's trade name or website. Logo's that are inappropriate or contain advertising for third parties are not allowed. Logo's that resemble those of other (candidate) Partners too much may be refused. All this at the discretion of ScanCircle;
- When a partner code is to be transferred from one Partner to another, only the reasonable costs may be charged. This at discretion of ScanCircle.

Service

- Making available the Partner Environment to the Partner and a customizable scan widget that can be integrated on the Partner's website;
- For each scan performed via the Partner Environment and every time an End User is redirected to the Partner's website, the link to the scan results will be sent to the email/web address specified by the Partner;
- All e-mails for the End Users who registered in the Partner Environment, will be co-branded with the logo and signature specified by the Partner. The Partner receives a copy of important e-mail messages for the End Users (amongst others warnings and expired registrations);
- The Partner has online access to the scans performed via the Partner Environment, including the reference codes specified and (masked) e-mail address of registered End Users.

Availability

- ScanCircle is allowed to technically operate the Service at its own discretion at any point in time. In this regard ScanCircle reserves (among others) the right to implement functional and technical changes and/or improvements to the Service(s) and procedures;
- ScanCircle will try to provide the best possible Service and strives to maximize availability, quality and security of the Service. However, ScanCircle cannot give any guarantees in this regard. E.g. due to technical outages, ScanCircle cannot guarantee continuous availability of the Service;
- ScanCircle is allowed to disable the Service (temporarily) or to limit its use without prior notification to meet maintenance requirements or install modifications and/or improvements. ScanCircle will try to inform the Partner in advance in a timely manner. If this is not reasonably possible, it will do so as soon as possible afterwards.

Partner Agreement

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- The Partner Agreement is implicitly concluded by applying for the Partner Program (and confirming this), including the acceptance of these Partner terms & conditions;
- Upon confirmation of the application, the specified email address will be added to ScanCircle's newsletter mailing list (powered by MailChimp);
- The concept, Service, scan program, website and the scan data are the property of ScanCircle;
- The Partner is not allowed to share the Service with third parties or to use it for any other purpose without written permission from ScanCircle;
- The Partner will not try to reverse engineer the scan program or website or use it in such a way that the Service will be adversely affected and/or use by others is hindered;
- Partners are not allowed to charge money for the scan itself, but only e.g. in combination with support during/after the scan;
- While ScanCircle will do its best to prevent its e-mails are treated as spam, the Partner must ensure correct delivery of e-mails from partners@scancircle.com and noreply@scancircle.com.

Trial

- When the Partner confirms the application, a 30-day trial period starts which is fully functional with the exception that the Partner is not listed on the country map in the Main Environment, only has access to the generic parts of the partner forum and support by ScanCircle is limited;
- At any time during the trial period, the Partner may upgrade to the full Service, whereby the remaining trial period will be added to the chosen subscription period;
- If the Partner does not upgrade to the full Service, the trial will expire and the Partner Environment will automatically be deactivated. If still not upgraded within the next week, the Partner Agreement will be terminated;
- Each Partner is only entitled to one trial period. If a Partner reapplies (using the same or a different partner code), the Partner Environment will be deactivated and the Partner must upgrade to the full Service or the Partner Agreement will be terminated.

Fee

- The Partner can online choose the new subscription period (3, 6 or 12 months);
- The fixed Fee for the Service is based on a Fair Use Policy (FUP): the average number of scans per month must not regularly exceed 150;
- If the Partner does exceed the FUP limit, ScanCircle will contact the Partner. This can lead to an increase of the Fee, reduction of the use by the Partner or termination of the Partner Agreement;
- Before the first payment, the Partner has the option to specify a reference code for a discount which is applied automatically. Introduction discounts are only valid for the first payment;
- For Partners in the European Union, VAT is applied unless the Partner has specified and confirmed a VAT number (not available to Partners in The Netherlands);
- The Fee can be paid online or by bank transfer;
- When the payment has been processed, the invoice will be sent to the Partner by e-mail;
- If, after the payment has been done, it turns out that the Partner has specified an incorrect country, confirmed an incorrect VAT number, entered a reference code for a discount that the Partner is not eligible for or otherwise unfairly gained financial benefit, the selected subscription period will be reduced afterwards by the proportion of the unfairly gained financial benefit. If foul play is suspected, an extra 30 days may be subtracted. Therefore, in case of doubt, please contact us before making the payment.

Renewal

- At any time during the subscription period, the Partner may renew the subscription, whereby the chosen subscription period will be added to the remaining subscription period;
- Approximately 1 month and 1 week before the expiration of the subscription, ScanCircle will send the Partner a reminder by e-mail to renew the subscription;
- If the Partner does not renew the subscription, it will expire and the functionality of the Partner Environment will be restricted. If not renewed within the next week, the Partner Agreement will be terminated.

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Termination

- When the Partner Agreement is terminated:
    - the Partner Environment will be removed;
    - the Partner's scan widget will no longer work;
    - the Partner will no longer have access to the scan data;
    - the Partner can no longer login to the partner forum;
    - the End Users registered in the Partner Environment will be transferred to the Main Environment;
    - the Partner code will be released for use by others;
- The Partner must remove the scan widget and other references to ScanCircle from its website within 30 days after the termination;
- There is no right to a refund upon termination before the end date.

Relation to End Users

- The Partner must always treat the End user fairly;
- The Partner must adhere to the privacy statement (link): handle the scan results and registration of End Users with due care, handle the data in accordance with the GDPR regulations (where applicable) and do not use this information for potentially unwanted advertising;
- The Partner may only register an End User with its consent and should inform them about the frequency, warning and mailing options as well as the requirement to confirm the e-mail address within 1 week;
- If the End User has not confirmed its e-mail address within one week, then the Partner will receive a copy of this message. The Partner may only register the computer(s) again with the consent of the End User.

Rotterdam, The Netherlands,
8th January 2019

Appendix: General Partner Terms & Conditions

General Partner Terms & Conditions

Article 1. General

1. These terms and conditions apply to the Partner Agreements between ScanCircle and its Partners, as far as not agreed differently in writing by both parties.
2. The applicability of any Partner purchase terms and conditions or other terms and conditions is explicitly rejected.
3. If one or more of these terms and conditions are determined to be wholly or partially invalid or void at any time, then the remainder of these terms and conditions will still fully apply . ScanCircle and the Partner will then define new terms and conditions to replace these invalidated or voided terms and conditions, sticking to the purpose and intend of the original terms and conditions as much as possible.
4. If uncertainty exists regarding the interpretation of one or more provisions of these terms and conditions, then the explanation must be found 'in the spirit' of these provisions.
5. Any situation between parties that is not regulated in these terms and conditions, it should be assessed in the spirit of these terms and conditions.
6. If ScanCircle does not always demand strict compliance to these terms and conditions, this does not mean that its provisions do not apply or that ScanCircle in any degree would lose the right to demand strict compliance to these terms and conditions in other cases.

Article 2 Duration and execution

1. The agreement between ScanCircle and the Partner is concluded for an indefinite period, unless the nature of the agreement implies otherwise or if the parties express differently otherwise in writing.
2. If a time period is agreed or specified, for certain activities or the supply of certain goods, this is never a strict deadline. If the date is not met, then Partner must notify ScanCircle in writing of the default. ScanCircle should be given a reasonable period to still implement the agreement.
3. ScanCircle will execute the agreement to the best of its ability and in accordance with the requirements of good workmanship. This on the basis of the knowledge at that time.
4. ScanCircle has the right to use third parties to perform certain activities. The applicability of Article 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is explicitly excluded.

Article 3 Suspension, cancellation and termination

1. ScanCircle is authorized to suspend the fulfillment of the obligations or to terminate the agreement if the Partner does not, not fully or not timely comply with the obligations under the agreement.
2. Furthermore ScanCircle is entitled to cancel the agreement if circumstances arise of such nature that fulfillment of the agreement is impossible or if circumstances arise of such nature that the unaltered fulfillment of the agreement cannot reasonably be expected from ScanCircle.
3. If the agreement is cancelled, any claims ScanCircle has on the Partner are due immediately. If ScanCircle suspends fulfillment of the obligations, it retains its rights under the law and agreement.
4. If ScanCircle proceeds to suspension or cancellation, it is in no way liable for damages and costs incurred in any way.
5. If the cancellation is accountable to the Partner, ScanCircle is entitled to compensation for direct and indirect damages, including costs.
6. If the Partner does not fulfill its obligations under the agreement and this justifies cancellation, then ScanCircle is entitled to cancel the agreement with immediate effect without any obligation to pay any damages or compensation, while the Partner being in default, is liable for damages or compensation.
7. With regard to the provisions in these terms and conditions each of the parties has the right to terminate the agreement in whole or in part with immediate effect if
   a. the other party does not properly or timely fulfill any obligation arising from the agreement and remains in default after written notice to comply with this obligation;
   b. the other party has received preliminary or final suspension of payments or is in a state of bankruptcy;
   c. the other party's business will be shut down, liquidated or taken over.

Article 4 Force majeure

1. ScanCircle is not obliged to fulfill any obligation towards the Partner if it is being hampered due to a circumstance that is beyond its control, and is not accountable to ScanCircle, neither under the law, a legal act or a generally accepted vision.
2. Force majeure is defined in these terms and conditions, in addition to what is understood in this regard in the law and jurisprudence, all external causes, foreseen or unforeseen, which are beyond ScanCircle's control but which prevent ScanCircle from meeting its obligations. This includes strikes in the company of ScanCircle or third parties. ScanCircle also entitled to invoke force majeure if the circumstance which prevents (further) fulfillment of the agreement occurs after ScanCircle should have fulfilled its obligation.
3. ScanCircle can suspend the obligations under the agreement during the period that the force majeure lasts. If this period lasts longer than two months, then each party is entitled to terminate the agreement without any obligation to pay damages to the other party.

Article 5 Payment

1. Payment must be made within 30 days after the invoice date in a manner specified by ScanCircle in the currency stated in the invoice, unless otherwise indicated by ScanCircle in writing. ScanCircle is entitled to periodic billing.
2. If the Partner fails to pay an invoice in time, ScanCircle is entitled to suspend the agreement and, if that period is longer than one month, cancel the agreement without any obligation to pay damages.

Article 6 Liability

1. If ScanCircle is considered liable, then this liability is limited to what is stated in this provision.
2. ScanCircle is not liable for damages of any kind, caused by incorrect and/or incomplete data supplied by or on behalf of the Partner.
3. If ScanCircle be liable for any damage, liability is limited to twice the invoice value of the current subscription.
4. ScanCircle's liability is always limited to the amount paid out by its insurer in that case.
5. ScanCircle is only liable for direct damage.
6. Direct damage only involves the reasonable costs of determining the cause and extent of the damage, as far as the determination relates to damage under these terms and conditions, any reasonable costs for making ScanCircle's poor performance meet the agreement, as far as accountable to ScanCircle and reasonable costs incurred to prevent or limit damage, insofar as the Partner proves that these costs have led to limitation of direct damage under these terms and conditions. ScanCircle is never liable for indirect damages, including consequential damages, lost profits, lost savings and damage due to business interruption.
7. The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence of ScanCircle or its senior subordinates.
8. ScanCircle must perform the agreed work to best effort based on an obligation of effort and never an obligation of result.
9. To reduce the risks of unauthorized access to, and destruction or loss of the data supplied by ScanCircle etc., ScanCircle has taken the necessary security measures, but ScanCircle cannot give any guarantees in this regard.

Article 7 Indemnification

1. The Partner indemnifies ScanCircle for any claims by third parties who may suffer damage due to the execution of the agreement and whose cause are not attributable to ScanCircle. If in those cases, ScanCircle is addressed by third parties, the Partner is required both outside and inside court to support ScanCircle and immediately do everything that can be expected. Should the Partner fail to take adequate measures, then ScanCircle is entitled to do so itself, without notice. All incurred costs and damages on the part of ScanCircle and third parties, are for the account and risk of the Partner.

Article 8 Intellectual property

1. ScanCircle retains the rights and privileges for which it is entitled under the copyright and other intellectual laws and regulations. ScanCircle has the right to use the knowledge gained from the implementation of an agreement for other purposes, provided that no strictly confidential information from the Partner is given to third parties.

Article 9 Applicable law and disputes

1. On all legal relations involving ScanCircle, only the Dutch law is applicable, also if a contract is wholly or partly executed abroad or if the party involved in the legal relationship resides abroad. The applicability of the CISG is excluded.
2. The judge in the residence of ScanCircle is to have exclusive jurisdiction over disputes, unless the law requires otherwise. Nevertheless ScanCircle has the right to submit the dispute to the competent court according to law.
3. The parties will only appeal to the courts after they have done their utmost to settle the dispute in mutual consultations.

Article 10 Location and change policy

1. Applicable is the last version published on the ScanCircle website.
2. These partner terms and conditions and the information on the website may be changed by ScanCircle at any time.
3. The Dutch text of these conditions is decisive for its interpretation.