

## SmartSimple Master Subscription Agreement

**Ref. number:** [Click here to enter text.](#)

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY (1) EXECUTING THIS AGREEMENT, OR (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

### 1. Definitions

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **"Control,"** for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means this Master Subscription Agreement.

**"Beta Services"** means SmartSimple services or functionality that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**"Content"** means information obtained by SmartSimple from publicly available sources or its third-party content providers and made available to Customer through the Services, Beta Services or pursuant to an Order Form, as more fully described in the Documentation.

**"Data Protection Laws and Regulations"** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Canada, Switzerland, the United Kingdom and the United States and its states, applicable to the Processing of Personal Data under the Agreement as amended from time to time.

**"Data Processing Contract"** means the contract between controllers and processors referred to in Article 28 Section 3 of the GDPR.

**"Data Processing Addendum"** means the Data Processing Contract that SmartSimple provides to Our Clients who are subject to the GDPR. The Data Processing Addendum is an Addendum to this Agreement.

**"Documentation"** means the applicable Service's Trust and Compliance documentation, currently consisting of, but not limited to, SmartSimple's SOC 2 Report, information security policies, and their usage guides and policies, as updated from time to time, are available from SmartSimple. Additional documents may be made available from time to time.

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**"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC (General Data Protection Regulation).

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**"Marketplace"** means an online directory, catalog or marketplace, such as the marketplace at <https://www.smartsimple.com/marketplace>, of applications that interoperate with the Services.

**"Non-SmartSimple Application"** means a Web-based, mobile, offline or other software application functionality that is provided by You or a third-party or listed on a Marketplace and interoperates with a Service, including, for example, an application that is developed by or for You, or is identified as such on the SmartSimple website.

**"Order Form"** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"Purchased Services"** means Services that You or Your Affiliate purchase under an Order Form.

**"Services"** means the products and services that are ordered by You under an Order Form, and made available online by Us, including associated SmartSimple offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-SmartSimple Applications.

**"User"** means an individual who is authorized by You to use a Service, for whom You have purchased a subscription (or in the case of any Services provided by Us without charge, for whom a Service has been provisioned), and to whom You (or, when applicable, Us at Your request) have supplied a user identification and password (for Services utilizing authentication). Users may include, for example, Your employees, consultants, contractors and agents, and third-parties with which You transact business.

**"We," "Us" or "Our"** means the SmartSimple described in Section 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have signed Order Forms.

**"Your Data" or "Customer Data"** means electronic data and information submitted by or for Customer to the Services, excluding Content and Non- SmartSimple Applications.

## 2. Our Responsibilities

### 2.1 Provision of Purchased Services.

We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms and Documentation, (b) provide applicable SmartSimple standard live support (24 hours a day, 5 days a week) for the Services to You at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice as provided in the Documentation), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-SmartSimple Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to Our provision of the Services to Our customers generally (i.e., without regard for Your particular use of the Services), and subject to Your use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

### 2.2 Protection of Your Data.

We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, implementing technical and organizational security measures as required by the GDPR, and laid out in the most recent version of our "Security, Privacy, and Architecture Documentation"; measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

### 2.3 Hosting Locations.

SmartSimple will host in your jurisdiction and the following facilities are used.

Customer Location	Production Region	Backup Region
 EU	Amazon Web Services (AWS) EU (Ireland)	AWS EU Frankfurt
 United Kingdom	Amazon Web Services (AWS) Europe (London Region)	AWS Europe (London Region)
 United States	Amazon Web Services (AWS) US East (North Virginia)	AWS US West (Oregon)
 Canada	Amazon Web Services (AWS) Canada (Central) – Montreal, Canada	AWS Canada (Central) – Montreal, Canada
 Asia Pacific	Amazon Web Services (AWS) Asia Pacific – Sydney, Australia	AWS Asia Pacific – Sydney, Australia
 US Federal	Amazon Web Services (AWS) GovCloud (US)	AWS GovCloud (US)

## **2.4 Our Personnel.**

We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

## **2.5 Beta Services.**

From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-SmartSimple Applications and Content, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

## **3. Use of Services and Content**

### **3.1 Subscriptions.**

Unless otherwise provided in the applicable Order Form or Documentation, (a) Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

### **3.2 Usage Limits.**

Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms and Documentation. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) except as set forth in an Order Form, a User identification may only be reassigned to a new individual replacing one who will no longer use the Service or Content. We reserve the right to review the usage limits of the Services and Content on an annual basis. Such reviews will be conducted at the time of renewal.

### **3.3 Your Responsibilities.**

You will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, Your use of Your Data with the Services, and the interoperation of any Non-SmartSimple Applications with which You use Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Section 3.5, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-SmartSimple Applications with which You use Services or Content.

## **3.4 Usage Restrictions.**

You will not (a) make any Service or Content available to anyone other than You or Users, or use any Service or Content for the benefit of, anyone other than You or Your Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-SmartSimple Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-SmartSimple Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, or use any of Our Services to access or use any of Our intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions, or graphics of the Service, or (4) determine whether the Services are within the scope of any patent. Any use of the Services in breach of this Agreement, Documentation, Section 3.5, or Order Forms, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services, however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension.

## **3.5 External-Facing Services.**

If You subscribe to a Service for sending electronic messages or for the creation and hosting of, or for posting content on, external-facing websites, such use is subject to Our External-Facing Services Policy at <https://www.smartsimple.com/trust-center-agreements> as may be applicable to a Service, and You are solely responsible for complying with applicable law in Your use of any cookies or other tracking technologies. We will notify You in writing a minimum of 30 days prior to any changes to Our External-Facing Services Policy coming into effect.

## **3.6 Removal of Content and Non-SmartSimple Applications.**

If We are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event, You will promptly remove such Content from Your systems. If We receive information that a Non-SmartSimple Application hosted on a Service by You may violate Our External-Facing Services or applicable law or third-party rights, We may so notify You and in such event, You will promptly disable such Non-SmartSimple Application or modify the Non-SmartSimple Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable the applicable Content, Service and/or Non-SmartSimple Application until the potential violation is resolved.

## 4. Non-SmartSimple Providers

### 4.1 Non-SmartSimple Products and Services.

We or third-parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-SmartSimple Applications and implementation and other consulting services. Any acquisition by You of such products or services, and any exchange of data between You and any Non-SmartSimple provider, product or service is solely between You and the applicable Non-SmartSimple provider. We do not warrant or support Non-SmartSimple Applications or other Non-SmartSimple products, services or content, whether or not they are designated by Us as “certified” or otherwise, unless expressly provided otherwise in an Order Form.

### 4.2 Non-SmartSimple Applications and Your Data.

If You choose to use a Non-SmartSimple Application with a Service, You grant Us permission to allow the Non-SmartSimple Application and its provider to access Your Data as required for the interoperation of that Non-SmartSimple Application with the Service. We are not responsible for any disclosure, modification, deletion or corruption of Your Data resulting from access by such Non-SmartSimple Application or its provider.

### 4.3 Integration with Non-SmartSimple Applications by SmartSimple.

The services may contain features designed to interoperate with Non-SmartSimple Applications. For these third-party applications that SmartSimple has provided as an integral part of the service, we will provide a replacement solution at no cost to You in the event of the discontinued availability of such service features.

### 4.4 Integration with Non-SmartSimple Applications by You.

Third-parties may make available (for example, through a Marketplace or otherwise) products or services, including, for example, Non-SmartSimple Applications and implementation and other consulting services. To use such services, You may be required to obtain access to such Non-SmartSimple Applications and services from their providers, and may be required to grant Us access to Your account(s) on such Non-SmartSimple Applications or services. For third-party applications or services that You have chosen to integrate with, we cannot guarantee the continued availability of such service features, and may cease providing them without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-SmartSimple Application or service ceases to make the Non-SmartSimple Application available for interoperation with the corresponding Service features in a manner acceptable to Us. In these instances, the agreement is solely between You and the third-party provider.

## 5. Fees and Payment for Purchased Services

### 5.1 Fees.

You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.



## **5.2 Invoicing and Payment.**

You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

## **5.3 Overdue Charges.**

If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

## **5.4 Suspension of Service and Acceleration.**

If any charge owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. Other than for customers paying by credit card or direct debit whose payment has been declined, We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice) for billing notices, before suspending services to You.

## **5.5 Payment Disputes.**

We will not exercise Our rights under "Overdue Charges" or "Suspension of Service and Acceleration" sections above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

## **5.6 Taxes.**

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## **5.7 Future Functionality.**

You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## 6. Proprietary Rights and Licenses

### 6.1 Reservation of Rights.

Subject to the limited rights expressly granted hereunder, We and Our licensors and Content Providers reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

### 6.2 Access to and Use of Content.

You have the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.

### 6.3 License to Host Your Data and Applications.

You grant Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Non-SmartSimple Applications and program code created by or for You using a Service or for use by You with the Services and Your Data, each as appropriate for Us to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to any of Your Data, Non-SmartSimple Application or such program code. SmartSimple warrants that the hosting and back-up of Your Data will be in the hosting region as defined by the physical address of Your primary office location.

### 6.4 License by Customer to Use Feedback.

You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Our and/or Our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of Our or Our Affiliates' services.



## 7. Confidentiality

### 7.1 Definition of Confidential Information.

**“Confidential Information”** means all information disclosed by a party (**“Disclosing Party”**) to the other party (**“Receiving Party”**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content and our software that supports and enables the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information.

### 7.2 Protection of Confidential Information.

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third-party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-SmartSimple Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

### 7.3 Compelled Disclosure.

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally required or permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 8. Representations, Warranties, Exclusive Remedies and Disclaimers

### 8.1 Representations.

Each party represents that it has validly entered into this Agreement and has the legal power and authority to do so.

### 8.2 Our Warranties.

We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-SmartSimple Applications" section above, We will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

### 8.3 Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## 9. Mutual Indemnification

We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party ("Claim Against") as a result of any error or breach of applicable law by the Services We provide to You.

You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third-party (also "Claim Against") as a result of Your use of the Services in a manner that infringes or misappropriates such third-party's intellectual property rights, or that violates the Agreement, the Documentation, Order Form or applicable law.

Each indemnity protects the indemnified party from any damages, attorney fees and costs finally awarded against the indemnified party as a result of, or for amounts paid under a settlement of a Claim Against subject to certain limitations. We elaborate scopes of these limitations below.

Terms of both indemnities require:

promptly informing the other party with written notice of the Claim Against,

affording the indemnifier sole control of the defense and settlement of the Claim Against; and

the indemnified party giving the indemnifier all reasonable assistance (with the cost of such assistance reimbursed by the indemnifier).

Our indemnity will NOT apply where such Claim Against arises from Content, a Non-SmartSimple Application, Your combination of technologies in a manner that infringes or Your use of the Services in violation of this Agreement, the Documentation, Order Form or applicable laws.

## **9.1 Indemnification by Us.**

If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and expense and at no cost to You eliminate the risk to You of a Claim Against.

## **9.2 Exclusive Remedy.**

This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9 .

## **10. Limitation of Liability**

### **10.1 Limitation of Liability.**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

### **10.2 Exclusion of Consequential and Related Damages.**

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **11. Term and Termination**

### **11.1 Term of Agreement.**

This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

## **11.2 Term of Purchased Subscriptions.**

The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice of non-renewal (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of subscriptions will be at Our applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

## **11.3 Termination.**

A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains unresolved at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

## **11.4 Refund or Payment upon Termination.**

If this Agreement is terminated by You in accordance with Section 11.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 11.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms, to the extent permitted by applicable law. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

## **11.5 Your Data Portability and Deletion.**

Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download as provided in the Documentation. After such 30-day period, We will have no obligation to maintain or provide any of Your Data, and as provided in the Documentation will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

## **11.6 Surviving Provisions.**

The sections and subsections under the titles "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Customer Data Portability and Deletion," "Removal of Content and Non-SmartSimple Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

## **12. Who You Are Contracting With, Notices, Governing Law and Jurisdiction**

### **12.1 General.**

Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such dispute or lawsuit, depend on where You are domiciled.

If You are domiciled in:	You are contracting with:	Notices should be addressed to:	Governing law is:	The courts having exclusive jurisdiction are:
Canada	SmartSimple Software Inc., A federally incorporated corporation	4576 Yonge St, Suite 606, Toronto, ON, M2N 6N4	Ontario and controlling Canadian Federal law	Toronto, Ontario, Canada
A Country in Asia, Africa, Antarctica, Australia, Central or South America or the Caribbean, Europe other than the United Kingdom, or Mexico.	SmartSimple Software Ireland Limited	Unit A15 Bracetown Business Park, Clonee, Dublin 15 D15 YDC1	Ireland	Ireland
United Kingdom	SmartSimple Software UK Limited	Priory House, Pilgrims Court, Sydenham Road, Guildford, Surrey GU1 3RX	England and Wales	England and Wales
United States of America	SmartSimple Software Ltd., A Delaware Corporation	38 Fulton Street W., Suite 301, Grand Rapids, MI 49503, USA	Delaware and controlling United States Federal law	Delaware, United States

## 12.2 Manner of Giving Notice.

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c) the first business day after sending by email, except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.

## 12.3 Agreement to Governing Law and Jurisdiction.

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## 12.4 No Agency.

For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other SmartSimple company. Subject to any permitted Assignment under Section 13.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

## **12.5 Agreement to Data Protection Laws and Regulations.**

Where applicable, You agree to comply with the Data Protection Laws and Regulations that You are under the scope of, including but not limited to the GDPR.

## **12.6 Data Processing Contract.**

If You are under the scope of the GDPR, You agree to enter into a separate Data Processing Contract with Us. This contract must comply with the requirements for a Data Processing Contract set out in Article 28, Section 3 of the GDPR. SmartSimple has made such contract available at <https://www.smartsimple.com/trust-center-agreements>.

## **13. General Provisions**

### **13.1 Export Compliance.**

If you are contracting with SmartSimple Software Ltd., the Services, Content, other technology and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S. embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

### **13.2 Anti-Corruption and Conflict of Interest.**

Both parties declare that they have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legal@smartsimple.com](mailto:legal@smartsimple.com).

### **13.3 Entire Agreement and Order of Precedence.**

This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.



## **13.4 Assignment.**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees allocable to the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## **13.5 Relationship of the Parties.**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

## **13.6 Third-Party Beneficiaries.**

There are no third-party beneficiaries under this Agreement.

## **13.7 Waiver.**

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

## **13.8 Severability.**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

Client Name:	
Name:	
Title:	
Signature:	
Date:	
I have authority to bind the Corporation.	

SmartSimple Software	
Name:	
Title:	
Signature:	
Date:	
I have authority to bind the Corporation.	