

## SMARTDRAW FOR WINDOWS DESKTOP LICENSE AGREEMENT

PLEASE READ CAREFULLY: SMARTDRAW SOFTWARE, LLC (THE "COMPANY") IS WILLING TO LICENSE THE SOFTWARE ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS SOFTWARE LICENSE AGREEMENT (THE "AGREEMENT"). BY SELECTING THE "I ACCEPT" BUTTON BELOW OR BY INSTALLING, UPLOADING, ACCESSING OR OTHERWISE USING ALL OR ANY PORTION OF THE SOFTWARE, YOU AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT. BEFORE YOU CONTINUE, YOU SHOULD PRINT OR SAVE A LOCAL COPY OF THIS AGREEMENT FOR YOUR RECORDS. IF YOU ARE AGREEING TO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, AND ALL REFERENCES TO "YOU" SHALL APPLY TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT WISH TO BE BOUND BY THE TERMS OF THIS AGREEMENT, THEN DO NOT INSTALL, UPLOAD, ACCESS OR OTHERWISE USE THE SOFTWARE.

IF YOU ARE **ACCESSING** THE SOFTWARE PRIOR TO PURCHASING A LICENSE TO THE SOFTWARE (A "TRIAL LICENSE"), YOU WILL BE SUBJECT TO ALL PROVISIONS IN THIS AGREEMENT APPLICABLE TO TRIAL LICENSES.

1. **DEFINITIONS.** For purposes of this Agreement, the following terms have the meanings set forth below:

"Authorized Number of Computers" means the number of Computers within which the Software may be loaded. If You are **accessing** the Software through a Trial License, "Authorized Number of Users" means You only. If the License Purchaser purchased any License other than a Site License, "Authorized Number of Computers" means the number of Computers as shown by the quantity of Licenses purchased by the License Purchaser as indicated on the invoice for the Software. If the License Purchaser purchased a Site License, "Authorized Number of Computers" means fifty (50); provided, that if the License Purchaser purchased a Site License that provides for a greater number of Authorized Number of Computers, "Authorized Number of Computers" means the number of Authorized Computers as shown on the Addendum to Site License provided by and signed by an authorized officer of the Company. For purposes of determining the Authorized Number of Computers, if the Software is loaded on a file server, the Software will be deemed to have been loaded on a number of Computers equal to the number of Users who are provided access to the Software through such file server.

"Authorized Number of Users" means the number of Users who may be provided access to the Software, which shall not exceed the Authorized Number of Computers.

"Computer" means computers, including desktop or laptop computers, or file servers, used for general computing functions (such as, but not limited to, word processing, e-mail, general purpose Internet browsing and office suite productivity tools).

"Contextual Click" means a right-click on Computers running Windows, a ctrl-click or secondary click on Apple Computers, and a long tap on touch screen Computers.

"License" means the license granted to You pursuant to Section 2 of this Agreement.

“License Purchaser” means the person or entity that purchases the License as shown on the original invoice for the Software. If the invoice reflects both an individual name and an entity name, the Company will treat the entity as the License Purchaser for all purposes under this Agreement.

A "Run" occurs each time that the Software is launched.

“SmartDraw” means the online edition of the Software (which includes content storage on the Company’s servers), and any updates or error corrections thereto provided by the Company.

"Software" means the SmartDraw for Windows Desktop computer program, and any updates or error corrections thereto provided by the Company.

"User" means an individual user of the Software allowed access to the Software by the License Purchaser. For a Trial License, User means only You.

"User Documentation" means any user manuals and other documentation provided or otherwise made available to You by the Company under this Agreement.

"You" means the Licensed Purchaser and each User.

2. LICENSE AND TERM. Subject to the terms and conditions of this Agreement, the Company grants to You a nonexclusive, nontransferable, nonsublicensable, limited License to install and use the Software and use the User Documentation. The term of the License depends on the type of License the License Purchaser purchased as indicated on the invoice for the Software, as follows:

(a) If You are **accessing** the Software through a Trial License, your License will commence on the date of installation of the Software and end on the later to occur of (a) the end of the seventh (7th) calendar day following installation, or (b) the conclusion of the fifth time the Software is Run, in each case unless extended by the Company.

(b) If a perpetual License (a “Perpetual License”) was purchased, this License does not expire and may only be terminated by the Company if You violate the terms of this Agreement.

(c) If a License other than a Perpetual License (a “Subscription License”) was purchased, the Subscription License will last for the period of time for which the License Purchaser subscribed as indicated on the invoice for the Software (the “Subscription Term”), and may only be earlier terminated by the Company if You violate the terms of this Agreement. You acknowledge that (i) Your right to install and use the Software is limited to the Subscription Term, (ii) the Software is designed to cease to function upon expiration of the Subscription Term if the subscription is not renewed, and (iii) the License Purchaser may generally renew its Subscription License, but the terms upon which the Software may be licensed upon a renewal are subject to change by the Company in its sole discretion. Any attempt to defeat the time control disabling function in the Software is a material breach of this Agreement and a violation of intellectual property law.

3. **ADDITIONAL LIMITATIONS APPLICABLE TO ACADEMIC EDITION AND TRIAL LICENSES.** Academic Edition Licenses are available only to faculty and staff members of recognized academic institutions and to degree, diploma or certification seeking students who, at the time of installation of the Software, are full time students at such educational institutions. If an Academic Edition License was purchased as indicated on the invoice for the Software, the Software under this License may be used only for educational purposes and for no other purposes. Without limiting the foregoing, the Software may not be used for commercial, professional, or other for-profit purposes. A watermark indicating the limitations on use of the Software will be added to all content created with the Software. If You are **accessing** the Software through a Trial License, a substantial watermark indicating the limitations of Your use of the Software will be added to all content created with the Software.

4. **INSTALLATION AND USAGE.** The Software may be installed on up to the Authorized Number of Computers. The Software may be installed on or accessed by Computers as a multi-user installation, so long as the maximum number of total Computers on which the Software is installed or accessed does not exceed the Authorized Number of Computers. The License Purchaser agrees not to allow access to the Software to more than the Authorized Number of Users. **THIS IS NOT A CONCURRENT USER LICENSE.** The Authorized Number of Users includes each User that at any time is or has been given access to the Software, regardless of whether such User is using the Software at a particular point in time. If a Site License was purchased, the Software may be used solely for the License Purchaser's business purposes. The License Purchaser may allow Users to use the Software for this purpose only and the License Purchaser is responsible for its Users' compliance with this Agreement.

5. **MAINTENANCE AND PREMIUM SUPPORT PROGRAM.** If the License Purchaser purchased a Perpetual License and also purchased the Maintenance and Premium Support program ("Maintenance Support"), You will receive all updates and upgrades applicable to Your edition of the Software while Your subscription to Maintenance Support is active. If a Subscription License was purchased, You will receive all updates and upgrades applicable to Your edition of the Software that are released during the Subscription Term at no additional charge. Certain updates or upgrades of the Software applicable to Your edition will require a change in the terms of this Agreement and will be accompanied by a new License agreement which, upon installation and Your selecting the "I Accept" button, will replace this Agreement and govern the license of the updated version.

6. **AUTOMATIC RENEWAL.** If a Subscription License was purchased, it will automatically be renewed upon expiration of the Subscription Term using the contact and billing information provided at the time of the initial purchase of the License. If Maintenance Support was purchased or included in connection with your purchase of a Perpetual License, it will automatically be renewed upon expiration of the term of the Maintenance Support at the Company's then applicable price for Maintenance Support using the contact and billing information provided at the time of the initial purchase of the License. The Company will notify the License Purchaser at least 30 days prior to automatic renewal, which notice will include the then applicable price and terms of the License or Maintenance Support, as applicable. The License Purchaser may cancel the automatic renewal of the License or Maintenance Support at any time by visiting the My Account page or contacting Support. If the License Purchaser

does not notify the Company of updates to the License Purchaser's payment method, to avoid interruption of Your service, the Company may participate in programs supported by the License Purchaser's card provider to try to update such payment information, and the License Purchaser authorizes the Company to continue billing the License Purchaser's account with the updated information that the Company obtains.

7. VALIDATION. The Software is Licensed to You with a unique License number, which is confidential and may not be published or disclosed by You. The Software will, from time to time, execute the validation feature of the Software. Validation verifies that the Software has been activated and is properly licensed. During a validation check, the Software will send information regarding the Software to the Company. This information includes the version of the Software and the unique License number. BY INSTALLING AND USING THE SOFTWARE, YOU CONSENT TO THE TRANSMISSION OF THIS INFORMATION TO THE COMPANY.

8. SMARTDRAW. If the purchase of a license to the Software includes a subscription to SmartDraw (the online edition of the Software ), use of SmartDraw will be subject to all terms, conditions and limitations set forth in the SmartDraw Terms of Service, acceptance of which is a condition to the use of SmartDraw.

9. GENERAL RESTRICTIONS. You agree and acknowledge that, unless enforcement is prohibited by applicable law (and then only to the extent prohibited by applicable law), the following actions are expressly prohibited:

(a) You may not (and may not permit any third party to) decompile, disassemble or reverse engineer the Software.

(b) You may not (and may not permit any third party to) modify, translate, adapt, arrange or create derivative works of the Software or the User Documentation.

(c) You may not (and may not permit any third party to) sell, transfer, rent, lease, loan, or otherwise distribute all or any portion of the Software, the User Documentation or any other rights granted to You in this Agreement.

(d) Except as otherwise expressly provided in this Agreement, You may not (and may not permit any third party to) allow access to the Software over the Internet, including, without limitation, in connection with a web hosting, commercial time sharing, service bureau, or similar service.

(e) You may (and may not permit any third party to) not remove, alter or obscure any copyright or other proprietary notices, labels or marks from the Software or the User Documentation.

(f) You may not (and may not permit any third party to) otherwise install, access or otherwise use or copy the Software or the User Documentation other than in strict compliance with the terms of this Agreement.

Additionally, content from other sources may be protected by intellectual property rights of others. You may not (and may not permit any third party to) create, copy, upload, download, import or share any content from other sources into content created with the Software unless You have the right to do so.

10. FURTHER RESTRICTIONS ON USE OF CLIPART, SYMBOLS, TEMPLATES AND PHOTOGRAPHIC IMAGES. The Software contains clipart, templates and photographic images (collectively, "Images") which are owned by the Company or its licensors. You may use and publish the Images as part of Your own work product, subject to the restrictions in this Agreement and any additional restrictions or conditions described in the credits dialog box in certain Image libraries. Where an Image in a library contains a copyright notice, the notice must be maintained and unaltered in any reproduction of the Image. To find out if an Image is covered by a copyright notice, make a Contextual Click on the Image in the applicable Image library and select "Credits" from the menu to view license information. Subject to the foregoing:

(a) You may incorporate any Images into Your own original work and publish, display and distribute Your work in any media.

(b) You may not resell, sublicense or otherwise make available the Images for use or distribution separate from Your own work.

(c) You may not create scandalous, obscene, defamatory or immoral works incorporating any Image, or use any Image for any purpose prohibited by law.

(d) You may not use any Images in a manner that suggests an association with, or endorsement of, any product or service provided by any identifiable individuals, products or entities.

11. ALL RIGHTS RESERVED. Title to and ownership of the Software, the User Documentation and all related intellectual property are retained by the Company and its licensors. The Software is confidential and the Software and the User Documentation are copyrighted. The Software and the User Documentation are Licensed to You, not sold. All rights of every kind that are not expressly granted to You in this Agreement are entirely and exclusively reserved by the Company and its licensors.

12. LIMITED WARRANTY. The Company warrants that, as of the date on which the Software is purchased and for thirty (30) days thereafter, the Software will provide the features and functions generally described in the User Documentation and that the media on which the Software is furnished, if any, will be free from defects in materials and workmanship under normal use. Except for the foregoing, the Software and the User Documentation are provided "AS IS." All warranty claims must be made during such thirty (30) day period. The Company's entire liability and Your exclusive remedy will be, at the Company's option, to attempt to correct or work around errors, to replace the defective media on which the Software is furnished, if any, or to refund the License fees, if any, paid by You and terminate this Agreement.

13. **DISCLAIMER OF WARRANTY.** EXCEPT AS SPECIFIED IN THIS AGREEMENT, THE COMPANY MAKES, AND YOU RECEIVE, NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND THE USER DOCUMENTATION. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FUNCTIONALITY IN THE USER DOCUMENTATION OR ANY COMMUNICATION WITH YOU CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, THE COMPANY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, THE COMPANY DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE FOREGOING MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC RIGHTS. OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION, MAY APPLY TO YOU.

14. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; LOSS OF PROFITS, REVENUE, OR DATA; BUSINESS INTERRUPTION, OR COST OF COVER. IN ADDITION, IN NO EVENT SHALL THE LIABILITY OF THE COMPANY FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, USER DOCUMENTATION, OR THIS AGREEMENT EXCEED \$1,000. THE LIMITATIONS OF LIABILITY IN THIS SECTION 14 SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE.

15. **EXPORT REGULATIONS.** All Software and User Documentation delivered under this Agreement are subject to United States export control laws and may be subject to export or import laws and regulations of other countries. You agree not to export the Software or the User Documentation in violation of United States or other applicable export control laws.

16. **U.S. GOVERNMENT RESTRICTED RIGHTS.** If the Software is being Licensed by or on behalf of the United States government or a United States government prime contractor or subcontractor, the Software and the User Documentation are provided with the same commercial license rights as are described elsewhere in this Agreement.

17. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, U.S.A. without giving effect to the conflict of laws principles thereof. Notwithstanding any choice of law provision or otherwise, the Uniform Computer Information Transactions Act and the United Nations Convention on the international Sale of Goods shall not apply to this Agreement.

18. **ARBITRATION; VENUE.** You and the Company agree that all disputes, claims or controversies arising under or pursuant to this Agreement will be submitted to neutral, binding arbitration to be held in San Diego, California before a retired judicial officer pursuant to the Comprehensive Rules and the

Arbitration Administrative Policies of the Judicial Arbitration and Mediation Services (JAMS). You agree to give up any rights You may have to litigate any such disputes, claims or controversies in a court or jury trial; provided, however, that nothing herein shall limit the rights of You or the Company to pursue injunctive or other equitable relief in an appropriate court or other legal forum. In the event of an action for injunctive or other equitable relief, or if the agreement to arbitrate as provided herein is for any reason deemed invalid, You and the Company agree that the sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the State and Federal courts in San Diego County, California. You hereby agree to service of process in accordance with the rules of such courts.

19. **ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of You and the Company relating to the subject matter hereof and supersedes any and all other previous or contemporaneous communications, agreements, representations, warranties or advertising with respect to the Software and User Documentation. THE TERMS OF THIS AGREEMENT SHALL PREVAIL OVER ANY PRE-PRINTED TERMS OR OTHER CONFLICTING OR ADDITIONAL TERMS OF ANY PURCHASE ORDER, ORDERING DOCUMENT, ACKNOWLEDGEMENT OR CONFIRMATION OR OTHER DOCUMENT ISSUED BY CUSTOMER, EVEN IF SIGNED AND RETURNED BY THE COMPANY.

20. **SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable in part, the remaining portion of such provision, together with all other provisions of this Agreement, shall remain valid and enforceable and continue in full force and effect to the fullest extent consistent with law.

21. **NO WAIVER.** No term or provision hereof will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against whom the waiver is asserted. No waiver (whether express or implied) will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach.

22. **LANGUAGE.** The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.

23. **CERTAIN TAXES.** If the License Purchaser is subject to the Value Added Tax (“VAT”) within the European Union or the Goods and Services Tax (“GST”) within Australia, and has provided the Company with an exemption identification number to avoid collection of the tax in connection with the purchase of the License, the License Purchaser is deemed for all purposes to have represented and warranted to the Company that it holds a valid exemption from the VAT or GST, as applicable. The License Purchaser will indemnify and hold harmless the Company for any claims against the Company resulting from a breach of this representation and warranty by the License Purchaser.

24. **BASIS OF BARGAIN.** You acknowledge and agree that the Company has entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy

may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.