

SMARTDRAW TERMS OF SERVICE

General

Welcome to online edition of SmartDraw ("SmartDraw") which is maintained and operated by SmartDraw Software, LLC (the "Company").

THIS SMARTDRAW TERMS OF SERVICE (THE "TERMS") SHALL GOVERN YOUR ACCESS TO AND USE OF SMARTDRAW. PLEASE CAREFULLY READ THESE TERMS BEFORE USING SMARTDRAW. THE COMPANY WILL ALLOW ACCESS TO SMARTDRAW ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE PROVISIONS CONTAINED IN THESE TERMS. BY YOUR USE OF SMARTDRAW, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS. BEFORE YOU CONTINUE, YOU SHOULD PRINT OR SAVE A LOCAL COPY OF THESE TERMS 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 THESE TERMS, THEN DO NOT USE OR ACCESS SMARTDRAW. SMARTDRAW IS NOT INTENDED FOR USE BY YOU IF YOU ARE UNDER 13 YEARS OF AGE. BY AGREEING TO THESE TERMS, YOU ARE REPRESENTING TO SMARTDRAW THAT YOU ARE OVER 13 YEARS OF AGE.

IF YOU ARE ACCESSING SMARTDRAW PRIOR TO PURCHASING A LICENSE TO SMARTDRAW, YOU WILL BE DEEMED FOR ALL PURPOSES OF THESE TERMS TO BE ACCESSING SMARTDRAW THROUGH A TRIAL LICENSE AND YOU WILL BE SUBJECT TO ALL PROVISIONS IN THESE TERMS APPLICABLE TO TRIAL LICENSES.

Definitions

For purposes of these Terms, the following terms have the meanings set forth below:

"Authorized Number of Users" means the number of Users who may be provided access to SmartDraw by the License Purchaser. If You are accessing SmartDraw through a free Trial License, "Authorized Number of Users" means You only. If the License Purchaser purchased any license to access SmartDraw other than a Site License, "Authorized Number of Users" means the number of Users as shown by the quantity of licenses purchased or otherwise acquired by the License Purchaser as indicated on the invoice for SmartDraw. If the License Purchaser purchased a Site License, "Authorized Number of Users" means fifty (50); provided, that if the License Purchaser purchased a Site License that provides for a greater number of Authorized Number of Users, "Authorized Number of Users" means the Authorized Number of Users as shown on the Addendum to Site License provided by and signed by an authorized officer of the Company.

"Content" means diagrams, documents and other information created by You on, or uploaded by You to, the Company's servers or servers otherwise under the Company's control or possession.

“Contextual Click” means a right-click on Devices running Windows, a ctrl-click or secondary click on Apple computers, and a long tap on touch screen Devices.

"Device" means (a) computers, including desktop or laptop computers, used for general computing functions (such as, but not limited to, word processing, e-mail, general purpose Internet browsing and office suite productivity tools), and (b) smartphones, tablets or other forms of mobile computing devices that permit the running of a web browser.

“License Purchaser” means the person or entity that purchases the License as shown on the invoice for SmartDraw. 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.

"Malware" means viruses, worms, time bombs, Trojan horses, spyware and other harmful or malicious code, files, scripts, agents or programs.

“SmartDraw” means the online software program and application (which includes Content storage on the Company’s servers) to which these Terms are embedded, and any updates or error corrections thereto provided by the Company.

“Subscription Term” means the period of time for which License Purchaser purchased or otherwise acquired a license to access SmartDraw as indicated on the invoice for SmartDraw. If the term of Your license to SmartDraw as indicated on the invoice for SmartDraw is perpetual, Your Subscription Term lasts for as long as the Company maintains SmartDraw. If You are accessing SmartDraw through a Trial License, “Subscription Term” means seven (7) days, unless extended by the Company.

"User" means an individual who is allowed access to SmartDraw by the License Purchaser.

"You" means the License Purchaser and each User.

License

Subject to the terms and conditions of these Terms, the Company grants to You a nonexclusive, nontransferable, nonsublicensable, limited license (the “License”) to access and use SmartDraw. SmartDraw may be accessed from any number of Devices, but the License Purchaser may not provide access to SmartDraw to a number of Users in excess of 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 SmartDraw, regardless of whether such User is accessing SmartDraw at a particular point in time. If the License Purchaser purchased a Site License, SmartDraw may be solely for the License Purchaser’s business purposes, and the License Purchaser may allow its Users to access SmartDraw only for this purpose. If You are accessing SmartDraw through a Trial License, a substantial watermark indicating the limitations of Your use of SmartDraw will be added to all graphics created with SmartDraw.

Term

The License will last for the Subscription Term, and may only be earlier terminated by the Company if You violate these Terms. You acknowledge that (i) Your right to access and use SmartDraw is limited to the term of the License Purchaser's Subscription Term, (ii) access to SmartDraw will cease upon expiration of the Subscription Term if the subscription is not renewed, and (iii) the License Purchaser may generally renew the License, but the terms upon which access to SmartDraw 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 SmartDraw is a material breach of these Terms and a violation of intellectual property law. Upon expiration or earlier termination of the Subscription Term, the Company shall have no obligation to maintain or provide access to any Content of Yours resident on the Company's servers or servers under the Company's control or possession, and may at its discretion thereafter, unless legally prohibited, delete all of Your Content resident on the Company's servers or servers under the Company's control or possession.

If the License Purchaser purchased a License to SmartDraw that is perpetual as indicated on the invoice for SmartDraw, the Subscription Term will expire only if the Company discontinues SmartDraw. Should that occur, the Company will provide the License Purchaser Windows compatible software that will enable the License Purchaser to download all of Your Content maintained in the Company's servers to a personal computer or server that uses the Windows operating system.

Automatic Renewal

If the License Purchaser purchased a License to SmartDraw for a Subscription Term that is not perpetual as indicated on the invoice for SmartDraw, the License 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. The Company will notify the License Purchaser at least 30 days prior to automatic renewal, which notice will include any changes to the price and terms of the License. The License Purchaser may cancel the automatic renewal of the License at any time by visiting the My Account page or contacting Customer 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 so obtains.

Use of SmartDraw

The License Purchaser is responsible for its Users' compliance with these Terms. The License Purchaser is responsible for identifying and authenticating all Users, for approving access by such Users to SmartDraw, for controlling against unauthorized access by Users and for maintaining the confidentiality of usernames, passwords and account information. By allowing

access to SmartDraw to Users, the License Purchaser accepts responsibility for the confidentiality and timely and proper termination of User records. The Company is not responsible for any harm caused by Users, including individuals who were not authorized to have access to SmartDraw but were able to gain access because usernames, passwords or accounts were not terminated on a timely basis. The License Purchaser is responsible for all activities that occur under its Users usernames, passwords and accounts or as a result of the Users' access SmartDraw. The License Purchaser will notify the Company immediately of any unauthorized use of SmartDraw, and the License Purchaser will make reasonable efforts to prevent unauthorized third parties from accessing SmartDraw. The License Purchaser may designate a License Administrator to administer the functions described above, but the License Purchaser will remain ultimately responsible for compliance with these Terms.

Content

The Company does not claim any intellectual property rights in any Content created by Users using SmartDraw under the License, and nothing in these Terms is intended to grant the Company any rights to Your Content or intellectual property therein except for the limited rights that are required by the Company to operate SmartDraw, as explained below. **Each User hereby agrees that for all purposes under this License, the Company shall be entitled to treat the License Purchaser as the full and sole owner of any intellectual property rights in Content created by Users authorized to access SmartDraw by the License Purchaser pursuant to this License. Notwithstanding anything to the contrary herein, the License Purchaser may terminate any User's access to SmartDraw at any time.**

By creating, uploading or otherwise submitting Content to SmartDraw, You grant the Company permission to take actions required to make SmartDraw available and functional. These actions also include but are not limited to: hosting Your Content on the Company's servers or servers under the Company's control or possession, and sharing it at Your direction. These actions include making available product features visible to You, for example, image thumbnails or document previews. These actions also include design choices the Company makes to administer SmartDraw technically and to redundantly backup data to keep it safe.

How the Company treats Your personal data and protects Your privacy generally is explained in the Company's Privacy Policy.

Sharing Content

You are solely responsible for Your conduct, Your Content and Your communications with others while using SmartDraw. It is Your responsibility to ensure that You have the rights or permission needed to comply with these Terms. By using SmartDraw You acknowledge that the Company has no obligation to monitor any information on SmartDraw. The Company is not responsible for the accuracy, completeness, appropriateness, or legality of Content You may be able to access using SmartDraw.

SmartDraw provides features that allow You to share Your Content with others. Content You share with others from SmartDraw could become available to the public at large should that link be shared by the original recipient. Please consider carefully what Content You choose to share and with whom You share it. There are many things that recipients may do with Content You share (for example, copy it, modify it, re-share it). You agree that the Company has no responsibility or obligation to supervise or monitor the use by others of Your Content, or to assist You in enforcing the terms of any permissions, rights or licenses You may grant to those with whom You choose to share Content.

Your Use of SmartDraw

Content in SmartDraw may be protected by intellectual property rights of others. Please do not create, copy, upload, download or import to, or share any Content on, SmartDraw unless You have the right to do so. You will be fully responsible and liable for what You create, copy, share, upload, download, import or otherwise employ while using SmartDraw, and the Company will have no responsibility of any type for such use. You must not upload Malware to SmartDraw.

If Your contact information or other information related to Your account changes, You must notify the Company promptly and keep Your information current. You are responsible for safeguarding the password that You use to access SmartDraw and You agree not to disclose Your password to any third party. You are responsible for any activity using Your account, whether or not You authorized that activity. You should immediately notify the Company of any unauthorized use of Your account.

You agree that you will not misuse SmartDraw. For example, do not interfere with SmartDraw or try to access SmartDraw using a method other than the interface and instructions the Company provides. You also agree to abide by the Company's Acceptable Use Policy and to the Company's General Restrictions.

Intellectual Property Matters

Use of SmartDraw does not give You ownership of any intellectual property rights in SmartDraw or any Content that is not Your own. The technologies the Company uses to provide SmartDraw are protected by patent, copyright, trademark, and other laws of both the United States and foreign countries. These Terms do not grant You any rights to use the Company's trademarks, logos, domain names, or other brand features.

Acceptable Use Policy

You agree not to misuse SmartDraw. For example, You must not, and must not attempt to, use SmartDraw to do any of the following:

- probe, scan, or test the vulnerability of any system or network;
- breach or otherwise circumvent any security or authentication measures;

- access, tamper with, or use non-public areas of the Company or the Company's servers or servers under the Company's control or possession;
- interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of SmartDraw;
- plant Malware or otherwise use SmartDraw to distribute Malware;
- access or search SmartDraw by any means other than the Company's publicly supported interfaces (for example, "scraping");
- send unlawful communications, promotions or advertisements, or spam;
- send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- publish anything that is fraudulent, misleading, or infringes another's rights;
- promote or advertise products or services other than Your own without appropriate authorization;
- impersonate or misrepresent Your affiliation with any person or entity;
- publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry, religious, racial or ethnic hatred; or
- violate the law in any way, or to violate the privacy of others, or to defame others.

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 SmartDraw;

(b) You may not modify, translate, adapt, arrange or create derivative works of SmartDraw;

(c) You may not sell, transfer, rent, lease, loan, or otherwise distribute all or any portion of SmartDraw or any other rights granted to You under these Terms;

(d) Except as otherwise expressly provided in these Terms, You may not allow access to SmartDraw in connection with a web hosting, commercial time sharing, service bureau, or similar service;

(e) You may not remove, alter or obscure any copyright or other proprietary notices, labels or marks from SmartDraw; and

(f) You may not otherwise install, access or otherwise use or copy SmartDraw other than in strict compliance with these Terms.

Restrictions on Use of Clipart, Symbols, Templates and Photographic Images

SmartDraw 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 these Terms 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, You may incorporate any Images into your own original work and publish, display and distribute your work in any media.

Modification and Termination of Your Use of SmartDraw

You can stop using SmartDraw at any time. The Company may revise these Terms from time to time and the most current version will always be posted on the Company's website and on Your login screen for SmartDraw. By accessing SmartDraw, You have agreed to be bound by the current version of these Terms. You should look at the current version of these Terms regularly.

Other Content

SmartDraw may contain links to third-party websites or resources. The Company does not endorse and is not responsible or liable for their availability, accuracy, the related content, products, or services. You are solely responsible for Your use of any such websites or resources.

Disclaimer of Warranty

SMARTDRAW IS PROVIDED "AS IS", AND YOUR USE OF SMARTDRAW IS AT YOUR OWN RISK, WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. EXCEPT AS SPECIFIED IN THESE TERMS, THE COMPANY MAKES, AND YOU RECEIVE, NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO SMARTDRAW. ANY STATEMENTS OR REPRESENTATIONS ABOUT SMARTDRAW AND ITS FUNCTIONALITY IN 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 USE OF SMARTDRAW WILL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE FOREGOING MAY NOT APPLY TO YOU.

Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) DAMAGES, REGARDLESS OF LEGAL THEORY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THE COMPANY HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE COMPANY'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO SMARTDRAW WILL NOT EXCEED THE AMOUNTS PAID BY THE LICENSE HOLDER TO THE COMPANY FOR THE PAST TWELVE MONTHS OF THE LICENSE. SOME STATES DO NOT ALLOW THE TYPES OF LIMITATIONS IN THIS PARAGRAPH, SO THEY MAY NOT APPLY TO YOU.

Copyright Matters and DMCA Policy

The Company respects the intellectual property rights of others and expect Users to do the same. In accordance with the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at:

<http://www.copyright.gov/legislation/dmca.pdf>,

the Company will respond expeditiously to claims of copyright infringement committed using SmartDraw if such claims are reported to our Designated Copyright Agent identified in the sample notice below.

If You are a copyright owner, authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through SmartDraw by completing the following DMCA Notice of Alleged Infringement and delivering it to our Designated Copyright Agent. Upon receipt of a Notice containing the information described below, the Company will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged content from SmartDraw.

The Notice should be in the following form:

DMCA Notice of Alleged Infringement ("Notice")

Identify the copyrighted work that You claim has been infringed, or if multiple copyrighted works are covered by this Notice, You may provide a representative list of the copyrighted works that you claim have been infringed.

Identify the material or link you claim is infringing (or the subject of infringing activity) and to which access is to be disabled, including at a minimum, if applicable, the URL of the link shown in SmartDraw or the exact location where such material may be found.

Provide your company affiliation (if applicable), mailing address, telephone number, and, if available, email address.

Include both of the following statements in the body of the Notice: "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)." "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of, the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."

Provide your full legal name and your electronic or physical signature.

Deliver this Notice, with all items completed, to our Designated Copyright Agent:

Copyright Agent
SmartDraw Software, LLC
9909 Mira Mesa Blvd., Ste. 300
San Diego, CA 92131
copyright@smartdraw.com

Security Overview

The Company provides this overview so that You can better understand the security measures the Company has put in place to protect the Content that You create and store using SmartDraw.

Service Organization Control (SOC) 2 Type II

The Company engages an outside auditing firm to conduct a Service Organization Control (SOC) 2 Type II audit each year. A SOC 2 report falls under the AICPA AT 101 guidelines and can be either a Type I or a Type II. Whereas SSAE 16 (SOC 1) reports are used for audits of controls that impact a user organization's internal controls over financial reporting (ICFR), SOC 2 reports are intended for service organizations whose services do not impact ICFR. The typical users of a SOC 2 report will include prospective clients of the service organization, management of the service organization, and independent auditors providing services to the user organizations. The SOC 2 audit covers operational and/or regulatory compliance controls and follows pre-defined Trust Services Principles and Criteria.

Secure Storage

The Company encrypts the Content that You create and store on SmartDraw using the AES-256 standard, which is the same encryption standard used by banks to secure customer data. Encryption for storage is applied after Content is uploaded, and the Company manages the encryption keys.

The Company hosts SmartDraw on redundant servers in data centers in multiple states, all of which are professionally managed with 24/7 security staff to keep the data centers physically secure.

Secure Transfers

Your files are sent between the client or browser from which you access SmartDraw and the Company's servers over a secure channel using RSA 2048-bit (Secure Sockets Layer) encryption, the standard for secure Internet connections.

Your Data is Backed Up

The Company keeps redundant backups of all the Content hosted on SmartDraw at multiple locations to minimize the possibility of data loss.

Privacy

A copy of the Company's full privacy policy can be found at:
<http://www.smartdraw.com/about/privacy.htm>

The Company guards Your privacy to the best of its ability and works hard to protect Your Content and other information from unauthorized access.

The Company's employees cannot view or access the Content you store using SmartDraw, and are only permitted to view file metadata (e.g., file names and locations). Like most online services, the Company has a small number of employees who must be able to access User data for the reasons stated in our privacy policy (e.g., when legally required to do so). But that's the rare exception, not the rule. The Company has strict policy and technical access controls that prohibit employee access except in these rare circumstances. In addition, the Company employs a number of physical and electronic security measures to protect user information from unauthorized access.

Compliance with Laws and Law-Enforcement

As set forth in the Company's privacy policy, and in compliance with United States law, the Company will cooperate with United States law enforcement when it receives valid legal process, which may require it to provide the contents of Your private files hosted on SmartDraw. In these cases, the Company will remove encryption from the files before providing them to law enforcement.

Where do You report security concerns?

The Company takes a number of measures to ensure that the data You create and store on SmartDraw is safe and secure. While the Company is very confident in its technology, the Company recognizes that no system can guarantee data security with 100% certainty. For that reason, the Company will continue to innovate to make sure that its security measures are state of the art, and will investigate any and all reported security issues concerning SmartDraw. Please report any security issues to security@smartdraw.com.

Entire Agreement

These Terms set forth the entire understanding of You and the Company relating to SmartDraw and supersede any and all other previous or contemporaneous communications, agreements, representations, warranties or advertising with respect to SmartDraw. THESE TERMS 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.

The English language version of these Terms is legally binding in case of any inconsistencies between the English version and any translations.

Export Laws

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to SmartDraw. You agree that such export laws govern Your use of SmartDraw, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed reexport" regulations). You agree that no data, information, software programs and/or materials resulting from use of SmartDraw (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

U.S. Government Restricted Rights

If the License to SmartDraw is being acquired by or on behalf of the United States government or a United States government prime contractor or subcontractor, the License SmartDraw is provided with the same commercial license rights as are described elsewhere in these Terms.

Arbitration

You and the Company agree that all disputes, claims or controversies arising under or pursuant to these Terms 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 these Terms 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.

Other Legal Matters

These Terms shall be governed by and construed in accordance with the laws of the State of California, without reference to or application of choice of law rules or principles.

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 these Terms. These Terms control the relationship between the Company and You. These Terms do not create any third party beneficiary rights.

If You do not comply with these Terms, and the Company does not take action right away, this does not mean that the Company is waiving or giving up any rights that it may have (such as taking action in the future).

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

You may not assign any of your rights in these Terms, and any such attempt is void, but the Company may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with SmartDraw.

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.

Basis of Bargain

You acknowledge and agree that the Company has entered into these Terms 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.