

## SMARTDRAW TERMS OF SERVICE

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## **General Restrictions**

In addition to the other restrictions and requirements set forth in these Terms and to the maximum extent permitted by applicable law you agree and acknowledge that you will not, and will not aid, assist, or allow any other person or entity to, engage in any of the following actions (the "General Restrictions"), and that each of the following actions is expressly prohibited to the maximum extent permitted by applicable law: (a) decompiling, disassembling, or reverse engineering SmartDraw or any portion thereof (including without limitation any features, functionality, algorithms, processes, procedures, methods, source code, or object code used in or incorporated into SmartDraw); (b) modifying, translating, adapting, arranging, porting, or creating derivative works of SmartDraw (or any portion thereof, including without limitation any content, data, or information belonging to, owned by, or licensed to the Company); (c) selling, transferring, renting, leasing, loaning, sublicensing, subcontracting, or otherwise distributing or granting to any other person or entity all or any portion of SmartDraw or any other rights granted to you under these Terms (including without limitation allowing any other person or entity to use your username, password, account, or other credentials for SmartDraw); (d) allowing access to SmartDraw in connection with a web hosting, commercial time sharing, service bureau, or similar service; (e) removing, altering or obscuring any copyright, trademark, or other proprietary notices, labels or marks on or from SmartDraw; (f) using, designing, or assisting in the design of any cheats, exploits, automation software, bots, hacks, mods, scripts, or any unauthorized software designed to modify, interfere, or interact with SmartDraw; (g) disrupting, overburdening, or aiding in the disrupting or overburdening of any SmartDraw servers or computer systems (including without limitation participating or otherwise being involved in any denial of service attacks); (h) instituting, assisting, or becoming involved in any type of attack, including without limitation privilege escalation attacks, denial of service attacks, or other attempts to disrupt SmartDraw or any other person's use or enjoyment thereof; (i) attempting to gain unauthorized access to SmartDraw or any accounts of other users of SmartDraw or to the computers, systems, services, or networks connected to

SmartDraw, including without limitation by modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device, or software that is part of SmartDraw or owned or operated by the Company; (j) soliciting or attempting to solicit personal information from other users of SmartDraw; (k) collecting, harvesting, uploading, sharing, or posting anyone's private or confidential information, including without limitation personally identifiable information, identification documents, or financial information, without all applicable or appropriate authorizations, consents, and approvals; (l) uploading, providing, storing, or transmitting through or using SmartDraw any data or information that is subject to any heightened security standard (including any personal health information, personally identifiable information, or financial information); (m) accessing or using SmartDraw if you are located in a country embargoed by the United States or if you are on the U.S. Treasury Department's list of Specially Designated Nationals; and (n) installing, accessing, or otherwise using or copying SmartDraw or any portion thereof other than in strict compliance with these Terms.

### **Restrictions on Use of Available Materials**

SmartDraw contains clipart, templates, photographic images, and other materials which are owned by the Company or its licensors (collectively, "Images"). 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, licenses, or conditions described in the credits dialog box in the applicable 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, restriction, license, or condition, 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.

All Images are provided solely on an "as is, where is, as available" basis and the Company makes no representation or warranty with respect to the Images, whether express or implied. In furtherance of the foregoing, the Company expressly disclaims all representations and warranties, express or implied, with respect to the Images, including without limitation any representations and warranties of fitness for a particular purpose, merchantability, availability, and non-infringement, and any and all use of the Images by you is at your sole risk.

### **Other Content**

SmartDraw may contain links to third-party websites or resources. In addition, your ability to access and use SmartDraw or certain functions thereof may be dependent on your use of third party software, including without limitation a modern and compatible web browser, software to view pdf files, an email client, compatible graphics drivers, and other third party software. The Company does not endorse and is not responsible or liable for any third party websites, resources, or software in any manner, including without limitation the availability, accuracy, related content, products, or services offered thereby. You are solely responsible for: (a) your access or use of any such websites, resources, or software; (b) compliance with any terms, conditions, licenses, or other agreements or arrangements required as a result of your download, installation, access, or use of

any such websites, resources, or software, or the products or services offered thereby.

### **Indemnification**

You and, if different than you, the License Purchaser (including without limitation each User thereof) agree to defend, indemnify, and hold harmless the Company and each of its other users, affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any and all claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including without limitation reasonable attorneys' fees) arising out of, relating to, or resulting from: (a) your violation of these Terms; (b) your use of SmartDraw (including without limitation any use of SmartDraw in a manner that has not been expressly authorized by the Company); (c) all Content and all use, disclosure, sharing, and display thereof (including without limitation the actual or alleged infringement of any person's or entity's intellectual property rights or other proprietary rights); (d) any representation or warranty made by you being false or misleading. For the avoidance of doubt: (i) if any action or proceeding is brought against you by the Company seeking indemnification pursuant hereto, the Company shall be entitled to recover its attorney's fees if the Company is the prevailing party in such action or proceeding; and (ii) all acts and omissions of a User shall also be deemed the acts and omissions of the License Purchaser for purposes hereof.

### **Disclaimer of Warranty**

SmartDraw IS PROVIDED: (A) WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND; AND (B) EXCLUSIVELY ON AN "AS IS, WHERE IS, AS AVAILABLE" BASIS. USE OF SmartDraw BY you AND your Users IS AT your OWN RISK. THE Company MAKES, AND you RECEIVE, NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SmartDraw. ANY STATEMENTS OR REPRESENTATIONS ABOUT SmartDraw AND ITS FUNCTIONALITY IN ANY MARKETING MATERIALS, PROMOTIONAL MATERIALS, OR COMMUNICATION WITH you OR AVAILABLE TO you CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. THE Company SPECIFICALLY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, AND NONINFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE COMPANY DOES NOT REPRESENT OR WARRANT THAT ACCESS TO OR USE OF SmartDraw WILL BE UNINTERRUPTED OR ERROR FREE.

IN ADDITION TO, AND WITHOUT LIMITING, THE FOREGOING, Beta Software MAY BE INCOMPLETE, INOPERABLE, AND MAY CONTAIN BUGS OR ERRORS, AND MAY INCLUDE FEATURES AND/OR FUNCTIONALITIES THAT THE Company MAY ADD, CHANGE, REMOVE, SEPARATELY RELEASE, OR NEVER RELEASE. **Beta Software IS PROVIDED AND MADE AVAILABLE BY THE Company EXCLUSIVELY ON AN "AS IS, WHERE IS, AS AVAILABLE" BASIS**, EXCLUSIVE OF ANY REPRESENTATION OR WARRANTY WHATSOEVER WHETHER EXPRESS, IMPLIED, STATUTORY, OR

OTHERWISE, AND BY ELECTING TO USE THE Beta Software you AGREE TO SOLELY ASSUME ALL RISKS OF ACCESSING AND USING Beta Software.

### **Limitation of Liability**

TO THE GREATEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE Company OR THE Company's AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY DAMAGES WITH RESPECT TO, RELATED TO, OR RESULTING FROM LOSS OF USE, DATA, BUSINESS, REPUTATION, OR PROFITS) TO you, License Purchaser, ANY User, OR ANY THIRD PARTY, 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 GROSS AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO, ARISING OUT OF, OR RESULTING FROM SmartDraw AND/OR THESE Terms WILL NOT EXCEED THE AMOUNTS PAID BY THE License Purchaser (OR IF NO License Purchaser, BY you) TO THE Company FOR THE MOST RECENT TWELVE MONTHS OF THE License, MEASURED FROM THE DATE THE LIABILITY ACCRUED.

Company will have no liability or obligation for any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including without limitation reasonable attorneys' fees) to you, License Purchaser, or any third party arising out of, relating to, or resulting from any act, event, cause, or condition that is beyond the Company's control, including, without limitation, accidents, acts of God, acts of any government, contagion or pandemic, failure of third party communication networks, failure or compromise of third party service providers, failure or compromise of independent contractors, failure of agents, unavailability of hardware or software (including without limitation SmartDraw or any portion thereof), war, terrorist activity, industrial or labor disputes, fire, flood, tornado, explosion, civil disorder, power failure, equipment failure, acts of civil or military authorities, theft, vandalism, misuse, insurrection, inability to obtain necessary supplies, any other circumstances beyond the Company's control, and any business interruption, loss of data, or failure related to or resulting from the foregoing.

Without limiting the generality of the foregoing and notwithstanding anything to the contrary herein, the Company will have no liability or obligation with respect to any claims, liabilities, damages, judgements, awards, losses, costs, expenses, or fees (including without limitation attorneys' fees) to License Purchaser or any third party arising out of, relating to, or resulting from any acts, omissions, events, circumstances, or occurrences by, with, or at any third party service provider (including without limitation the compromise of any third party's network, the unauthorized access or use of information from a third party, or any failure, non-availability, non-operation, error, or other malfunction or mis-operation of any third party or the software or solutions provided thereby), in each case as reasonably determined by Company.

In no event shall the Company have any liability to you for your access to or use of Beta Software, including but not limited to direct, indirect, consequential, incidental, special, and punitive

damages, and any damages based on lost profits, data, or use, regardless of whether damages are sought under contract, tort, or any other theory of liability. To the extent that the foregoing disclaimer of liability is unenforceable under applicable law, the Company's liability with respect to the Beta Software shall not, in the aggregate, exceed one hundred dollars (U.S. \$100.00).

### **Copyright Matters and DMCA Policy**

The Company respects the intellectual property rights of others and expect Users to do the same. In accordance with applicable law (including without limitation 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 (the "Notice") 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**

First, 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.

Second, 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.

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

Fourth, 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 DMCA Notice of Alleged Infringement 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."

Fifth, provide your full legal name and your electronic or physical signature.

Deliver the completed and duly executed Notice to our the following (our "Designated Copyright

Agent”):

Copyright Agent  
SmartDraw Software, LLC  
1780 Hughes Landing Boulevard, Suite 1100  
The Woodlands, Texas 77380  
copyright@smartdraw.com

## **Security Overview**

The Company provides this information 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 as well as related processes and limitations with respect to data security.

### **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.

### **Storage Security**

The Company encrypts the Content that you create and store on SmartDraw using the AES-256 standard. 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.

### **Data Transfer Security**

If supported by your Device and the associated software used to access SmartDraw, 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.

### **Data Back Up**

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

## Reporting Security Concerns

The Company routinely evaluates its security measures, undergoes information technology security related tests and procedures, and takes information security very seriously. If you become aware of any security issues associated with SmartDraw or the Company, please promptly report such issues to [security@smartdraw.com](mailto:security@smartdraw.com). The Company investigates all reported security issues and, if appropriate, takes or undergoes processes to address any identified security issues.

## Limitations

No security system is perfect and the Company cannot, and does not, guaranty the security of SmartDraw or its systems. Users and License Purchaser should only upload, enter, provide, or create data and information that you (and, if different than you, License Purchaser) is comfortable providing based on the security standards adopted by the Company as set forth above. Company will have no liability or responsibility to you or any third party for, and you assume all responsibility and liability for, the unauthorized access or use of any data or information.

In a timely manner following Company's receipt of a notice from License Purchaser (or if no License Purchaser, from you) during the Subscription Term or within 60 days following the earlier of the expiration or termination of the Subscription Term with a request by License Purchaser (or if no License Purchaser, from you) to destroy or overwrite Content, the Company shall promptly destroy or overwrite the applicable Content, other than Content contained in automatic computer backups and historical archives or that must be retained by the Company to fulfill any obligations of the Company (including without limitation for regulatory, legal, or audit purposes). If no such notice is provided by License Purchaser (or if no License Purchaser, by you) in the foregoing period, the Company will destroy or overwrite Content in accordance with the Company's document retention policies and standard backup and archival procedures (other than Content which must be retained by the Company to fulfill any obligations of the Company, including without limitation for regulatory, legal, or audit purposes). The Company may, if required by applicable law or upon reasonable request or demand by the applicable person, delete or remove any personally identifiable information or other information associated with or attributable to such person.

## Privacy

All data and information that you provide to the Company, through SmartDraw or otherwise, will be treated and handled in accordance with the Company's then-current Privacy Policy. You can access the Company's current Privacy Policy at <https://www.smartdraw.com/about/privacy.htm>, which such Privacy Policy may be updated from time-to-time in accordance with its terms. By accessing or using SmartDraw or by providing any information or data to the Company (through SmartDraw or otherwise), you agree to be bound by and subject to the Privacy Policy and agree that all data and information you provide will be used and handled in accordance with the Privacy Policy.

If required by applicable law or as may be ordered by a regulator or other governmental authority, including without limitation to meet national security or law enforcement requirements, the

Company may be required to provide the contents of your files to a regulator, other governmental authority, or other third party. In such instances, you authorize the Company to remove the encryption from your files and provide them to the applicable regulator, governmental authority, or other third party.

### **Publicity**

You and, if different than you, License Purchaser each agree that the Company may publicly refer to you and, if different, License Purchaser, orally and in writing, as a customer or user of the Company, and if License Purchaser is an entity, License Purchaser grants to Company a limited, non-exclusive, royalty-free license to use and display License Purchaser's name and logo on Company's website and in Company's marketing materials.

### **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 THE LICENSE PURCHASER, EVEN IF SIGNED AND RETURNED BY THE COMPANY.

### **Legal Compliance and Export Regulations**

You agree to comply with all laws and regulatory requirements applicable to you, your use of SmartDraw, any Content or other information you provide to the Company (including without limitation through SmartDraw), or any work product, creations, data, information, or files generated, created, communicated, or shared using SmartDraw.

Without limiting the generality of the foregoing, you understand that export laws and regulations of the United States and any other relevant local export laws and regulations apply to SmartDraw and to any Content ("Export Laws") and agree to fully comply, and ensure your use of SmartDraw is fully compliant with, all applicable Export Laws (including without limitation "deemed export" and "deemed reexport" regulations). You agree to ensure that no data, information, software programs and/or materials resulting from, uploaded to, created using, or which otherwise are attributable to your use of SmartDraw (or direct product thereof) will be exported, directly or indirectly, in violation of the Export Laws, or will be used for any purpose prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

### **U.S. Government Restricted Rights**

If the License is being acquired by or on behalf of the United States government or a United States government prime contractor or subcontractor, the License is provided as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101) with the same

commercial license rights as are described elsewhere in these Terms.

### **Arbitration; Waiver of Class Action**

You and the Company agree that, to the greatest extent permitted by law, except as expressly set forth in these Terms, any and all disputes, claims, controversies, actions, or proceedings arising out of or relating to these Terms, SmartDraw, or any transaction or arrangements resulting therefrom or performed in connection therewith that are not resolved by mutual agreement between you and the Company: (a) will be brought by a party in such party's individual capacity and not as a plaintiff or class member in any purported class or representative proceeding; and (b) will be submitted to neutral, final, and binding arbitration before JAMS (formerly Judicial Arbitration and Mediation Services), or its successor, pursuant to the United States Federal Arbitration Act, 9 U.S.C. §§1 et seq. Either party may commence the arbitration process by filing a written demand for arbitration with JAMS, with a copy to the other party. The arbitration will be conducted: (i) in accordance with the provisions of JAMS' Comprehensive Rules and Procedures in effect at the time of filing of the demand for arbitration; (ii) in the English language; and (iii) in Montgomery County, Texas. The parties will reasonably cooperate with JAMS and with one another in selecting a single arbitrator from a panel of neutrals provided by JAMS, and in scheduling the arbitration proceedings. If the parties are unable to agree on a single arbitrator from such panel of neutrals, the arbitrator will be determined and selected by JAMS. The parties agree that they will participate in the arbitration in good faith and that they will share equally in its costs. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgement upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. You and the Company agree that the arbitration shall be kept confidential and that the existence of the arbitration proceeding and any element of it (including but not limited to any pleadings, briefs, or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the tribunal, JAMS, the parties, their counsel, accountants, and auditors, insurers and re-insurers, and any person or entity necessary to the conduct of the proceeding. The confidentiality obligations in this section shall not apply: (y) if disclosure is required by law, or in judicial or administrative proceedings; or (z) as far as disclosure is necessary to enforce the rights arising out of an arbitration award. Without otherwise limiting the requirements imposed herein, a party may seek any interim or provisional relief that may be necessary to protect its interests hereunder solely in the state and federal courts located in Montgomery County, Texas, pending the resolution of any dispute in accordance herewith. If Company seeks interim or provisional relief in accordance herewith, the Company will have no obligation to prove actual damages or post any bond. You agree to give up any rights you may have to litigate any such disputes, claims or controversies in a court or jury trial. In the event of an action for interim or provisional 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 any and all disputes, claims, controversies, actions, or proceedings arising out of or relating to these Terms, SmartDraw, or any transaction or arrangements resulting therefrom or performed in connection therewith shall be the state and federal courts in Montgomery County, Texas. You hereby agree to service of process in accordance with the rules of such courts.

You expressly agree that: (a) any dispute, claim, controversy, action, or proceeding with or involving the Company is personal to you; (b) any dispute, claim, controversy, action, or

proceeding shall only be resolved by arbitration in accordance with these terms (except as otherwise expressly permitted in these Terms) in your individual capacity and not as a plaintiff or class action member in any purported class or representative proceeding; (c) you will not bring a dispute as a representative of any other person or persons; and (d) you will not permit a dispute to be brought as, and shall not participate in, a class or representative action on behalf of any other person or persons. Except as otherwise expressly set forth in these Terms, a dispute, claim, controversy, action, or proceeding may only be resolved through an individual arbitration proceeding in accordance herewith and shall not be brought as a class arbitration, a class action, or any other representative proceeding.

### **Other Legal Matters**

These Terms shall be governed by and construed in accordance with the laws of the State of Texas, U.S.A., 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, other than the right of Company to enforce the terms hereof against Users.

License Purchaser and, if different, you, will each: (a) ensure that all of the obligations and terms applicable to Users set forth in these Terms (as may be amended from time to time in accordance herewith) will be binding upon and applicable to each of its Users; (b) be responsible for all acts and omissions of each of its Users, including without limitation any breach by any User of any obligations applicable to such User pursuant to these Terms; and (c) assist and cooperate with the Company, as may be requested by the Company, to protect or enforce the rights or interests of the Company hereunder.

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). Any waiver by the Company, to be valid, must be in a writing duly executed by the Company, and any waiver of any right by the Company will not preclude any further exercise of that right.

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 or portion thereof shall be held invalid or unenforceable in part, such provision or portion thereof, as applicable, shall be interpreted and substituted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the 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.

The English language version of these Terms is legally binding, and in the event of any inconsistencies between the English version and any translations hereof, the English version shall control. The section headings provided in these Terms are for reference purposes only and shall

not affect in any way the meaning or interpretation of these Terms. The words herein, hereto, hereof, and words of similar import refer to these Terms as a whole and not to any particular section of these Terms. All instances of the words include, includes, or including in these Terms shall be deemed to be followed by “without limitation” unless already followed by such words or words of substantially the same meaning. The word “or” when used herein shall not be limited and shall mean the conjunctive “and/or”.

Company may, is expressly permitted to, and will not be deemed to be in breach of any obligation of these Terms if it elects to: (i) update, modify, or adjust any security, data security, or backup processes, procedures, protections, methods, controls, or measures, including without limitation adopting or implementing additional or stronger security processes or controls; (ii) update, modify, change, or adjust SmartDraw or any of the functionality, services, processes, procedures, interface, access methods, software, systems, or other aspects thereof, in whole or in part, including without limitation implementing new features, addressing errors, fixing bugs, and otherwise improving or modifying SmartDraw; (iii) update its Privacy Policy in accordance with its terms, which such updated Privacy Policy will be effective upon the applicable update; (iv) update its Acceptable Use Policy or General Restrictions, which such updates shall be effective upon notice to License Purchaser thereof; and (v) make any other modifications to SmartDraw or these Terms as may be necessary or appropriate to comply with any applicable law or regulation, which such modifications will be effective upon posting of such update.

Except as expressly set forth in this Agreement, all rights and remedies conferred herein shall be cumulative and in addition to all other rights and remedies available to each party.

### **Certain Taxes**

You, and if different than you, License Purchaser are each responsible for paying, and will pay, any and all taxes due and owing as a result of the License or the other transactions contemplated hereby (other than taxes owed by Company on Company’s income resulting from this Agreement, if any). If you or 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, you or 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 and you will each indemnify and hold harmless the Company for any claims against the Company resulting from a breach of this representation and warranty by the you or the License Purchaser.

### **Assignment**

Your rights hereunder are not assignable, sublicensable or transferable without the prior written consent of the Company, which consent may be provided or withheld on a case-by-case basis in the Company’s sole discretion. The Company may freely assign, transfer, and delegate its rights and obligations under this Agreement at any time and for any reason.

### **Notices; User Communications**

You agree to keep on-file with the Company, at all times, a valid email address and mailing address, in each case that you regularly monitor. If you change your email or mailing address, you agree to promptly (and in any event within three days) update the email address then on-file with the Company, either through appropriate section of the “My Account” menu when logged into SmartDraw or by notifying the Company’s customer service department (see the “contact us” link available at <https://www.smartdraw.com/support/>) and providing the customer service department with the updated information as well as sufficient information to identify you and verify your identity. You agree that any and all notices to be provided to you by Company may be provided, at the Company’s discretion: (a) through posting an account alert, notice, or message via the SmartDraw platform, which such notice will be deemed effective upon posting; (b) by sending such notice via email to your email address then on-file with the Company, which such notice shall be deemed effective upon sending such email; or (c) by sending such notice to your mailing address, either by US Postal Service or overnight courier, in each case postage prepaid, which such notice shall be deemed effective three (3) days after being sent if sent by US Postal Service or the day after being sent if sent by overnight courier. Any notice delivered to License Purchaser in accordance with the foregoing shall be deemed to have been given to any and all Users simultaneously, notwithstanding whether such notice was actually delivered to any Users.

Any and all notices that you may elect to provide to the Company shall be sent by physical letter to the Company either by US Postal Service or overnight courier, in each case postage prepaid, and which will be deemed given upon receipt by the Company. The Company’s address for purposes of such notice is:

SmartDraw Software, LLC  
Attn: Legal Department  
1780 Hughes Landing Boulevard, Suite 1100  
The Woodlands, Texas 77380

Notwithstanding the foregoing, in addition to sending any applicable notice, you agree to immediately inform the Company (which shall not constitute notice) of any information that is of a time-sensitive nature or which, pursuant to these Terms, can be communicated via email or by contacting the Company’s customer service department, by notifying the Company’s customer service department by email or message through the SmartDraw website (see the “contact us” link available at <https://www.smartdraw.com/support/>). Such time sensitive information includes, without limitation: (i) the compromise of any username, password, or account; (ii) the election to disable any particular account or User; (iii) any unauthorized access to or use of SmartDraw or any Content; or (iv) the actual or alleged infringement or misappropriation of any person’s intellectual property or other proprietary rights.

The Company reserves the right to send service related e-mails or initiate other communications (including without limitation phone calls and text messages) notifying you of or contacting you with respect to: (a) operational or other changes that may affect SmartDraw; (b) account issues, including without limitation for dual factor authentication, to the extent supported; (c) account and other service related information; (d) responses to any Content, including without limitation any inquiries, requests, or communications we receive from you; (e) to contact you regarding payment

matters; or (f) to contact you for such other interactions as are reasonable or appropriate with respect to your access or use of SmartDraw. Please note that you cannot opt out of service e-mails or communications because these service e-mails and communications provide information critical for the operation of, and your use of, SmartDraw. We may additionally send you marketing e-mails. You can opt-out of receiving such marketing e-mails by editing your communication preferences in your account settings. You hereby grant the Company permission to send you all service and marketing e-mails and to otherwise contact you (including without limitation by phone calls or text messages) as described above.

### **Basis of Bargain**

You acknowledge and agree that the Company has entered into these Terms in reliance upon the disclaimers of representations and warranties 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.