

SMART License Agreement
Version 02/10

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This Agreement (the "Agreement") is entered into by and between SMART ("SMART") and you the customer ("Licensee") and sets forth the terms and conditions under which SMART agrees to license products to Licensee. This agreement encompasses any and all individual users that have access to SMART through your License Agreement, the ("Authorized Users").

The terms and conditions of this Agreement are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding which may involve the Agreement. This Agreement may not be modified except by a mutually acceptable written consent that is executed by both parties hereto. This Agreement may be updated from time to time by SMART with or without prior notice.

1. Grant of Rights

The License granted for SMART under this Agreement authorizes Licensee on a non-exclusive basis to use SMART. SMART is licensed, not sold to a Licensee and SMART reserves all rights not expressly granted to a Licensee in this Agreement.

2. License Provisions

Subject to the receipt by SMART of the applicable license fees, Licensee has the right to use SMART products as follows:

- 2.1. **Enterprise License.** Licensee may use SMART products with an unlimited number of clients and prospects by Licensee's Authorized Users.
- 2.2. **Non-Transferable.** This License may not be assigned by Licensee to any third party without prior written permission from SMART.
- 2.3. **No Reverse Engineering | No Derivative Works.** Nothing in this Agreement shall permit Licensee to (1) copy, modify, create any derivative work of or include in any other products SMART Property, or (2) distribute any derivative works based on SMART products; or (3) reverse assemble or decompile SMART except as specifically authorized in writing by SMART.
- 2.4. **No Redistribution.** Licensee will not permit further redistribution of SMART products by either Licensee's customers, Licensee's employees or agents.

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4. License Fees and Payment

In consideration of the license rights granted herein, Licensee shall pay the appropriate license fees, payable in United States funds without deductions for taxes, assessments, fees, charges or setoffs. Payment of all license fees is due prior to Licensee's first download of the SMART Products.

5. Compliance with Licenses

As a SMART Licensee, you agree that no more than once every 12 months, SMART or its authorized representative shall, upon 10 days' prior written notice to you, have the right to inspect your records, systems, and facilities to verify that you use of any and all SMART products are in conformity with your valid licenses from SMART. If verification discloses that your use is not in conformity with a valid license, you shall immediately obtain valid licenses to bring your use into conformity. This may involve the payment of additional licensing fees.

6. Remedy

SMART's entire liability hereunder and Licensees' exclusive remedy for any matter related hereto shall be, at SMART's options either 1) return of the license fee Licensee paid, or 2) Repair or replacement of the SMART Product upon written notification from Licensee during the license period.

7. Disclaimer of Warranties

EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT THE SMART PRODUCTS ARE PROVIDED "AS IS" AND SMART MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ITS FUNCTIONALITY, CONDITION, PERFORMANCE, OPERABILITY OR USE. WITHOUT LIMITING THE FOREGOING, SMART DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR ANY GUARANTEE OF RESULTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THE REMEDY HEREIN GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM ONE JURISDICTION TO ANOTHER.

8. Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION WHICH SMART IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY SMART OF THE RISK OF YOUR CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH YOUR USE OF THE SMART PRODUCTS. ACCORDINGLY, YOU AGREE THAT SMART SHALL NOT BE RESPONSIBLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS-OF-PROFIT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF A LICENSING OR USE OF THE SMART PRODUCTS.

THE MAXIMUM LIABILITY OF SMART TO ANY PERSON, FIRM, CORPORATION IN CONNECTION WITH ANY LICENSE OR USE OF THE SMART PRODUCTS WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON A BREACH OR REPUDIATION OF THE CONTRACT, WARRANTY, TORT OR OTHERWISE SHALL IN NO CASE EXCEED THE ACTUAL PRICE PAID TO SMART BY THE LICENSEE FOR THE SMART PRODUCT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS PARAGRAPH ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION PAID HEREIN IN CONNECTION WITH THE LICENSE OF THE SMART PRODUCTS AND THAT WERE SMART TO ASSUME FURTHER LIABILITY OTHER THAN SET FORTH HERE, SUCH CONSIDERATION WOULD HAVE BY NECESSITY BEEN SET SUBSTANTIALLY HIGHER.

9. Indemnification

Licensee agrees to defend, indemnify and hold SMART and its employees, agents, representatives and assigns harmless from and against any claims, proceedings, damages, injuries, liabilities, costs, attorney's fees relating to or arising out of Licensees use of the SMART products or any breach of this Agreement.

10. Termination

License is effective until terminated. Licensee may terminate at any time by deactivating your SMART account. License will terminate immediately without notice if Licensee breaches any of the terms and conditions of this Agreement. Upon termination of this Agreement for any reason, Licensee will return or destroy all copies of the

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SMART Product; and Licensee will immediately curtail use of the SMART Products. You agree to indemnify SMART for reasonable attorney's fees and costs in enforcing SMART's rights under this Agreement.

11. Updates.

SMART has the right, but no obligation, to periodically update the SMART products at its complete discretion, without the consent or obligation to any Licensee or user. Any updates to the SMART products may or may not require Licensees to pay additional fees, at SMART's complete discretion.

12. Integration, Waiver, Severability

This Agreement contains the entire understanding and agreement between the parties. All prior agreements or understandings, oral or written, are superseded by this Agreement. This Agreement **may** not be supplemented, modified, released or discharged except by a written instrument signed by both parties. Any waiver by either party of any default or breach shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or different kind. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

13. Governing Law

The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Maryland. You hereby consent to the jurisdiction and venue of such courts and waive any jurisdiction or venue defenses otherwise available.

YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS

(Licensee Name)

(Name)
(Title)

(Date)