



# Smooth Sailing Technologies

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## End-User License Agreement ("Agreement")

*Last updated: 03.27.2019*

This End User Software Licence Agreement (the “**EULA**”) is a contract between the user of the Application (the “**End User**”) and Smooth Sailing Technologies. Please read this End-User License Agreement ("Agreement") carefully before clicking the "I Agree" button, downloading or using the application ("Application").

By clicking the "I Agree" button, downloading or using the Application, you are agreeing to be legally bound by the terms and conditions of this Agreement.

If you do not agree to the terms of this Agreement, do not click on the "I Agree" button and do not download or use the Application.

### **License**

1.1 *License.* Smooth Sailing Technologies grants you a revocable, non-exclusive, non-sub-licensable, non-transferable, limited license to download, install and use the Application solely for your personal, non-commercial purposes strictly in accordance with the terms of this Agreement.

1.2 *Reservation of Rights.* Except for the licence explicitly granted by Clause 1.1, Smooth Sailing Technologies reserves all its rights. The End User acknowledges and agrees that the End User is licensed to use the Application only in accordance with the express provisions of this

EULA and not further or otherwise.

1.3 *Email Support, etc.* Unless otherwise agreed by the Parties in writing, Smooth Sailing Technologies shall have no obligation to upgrade, update, bug-fix, to provide support or maintenance services, or to provide assistance or consultancy services in relation to the Application. We will do what we can through email support.

## Restrictions

2.1 *Restrictions.* Except to the extent permitted by applicable mandatory law, the End User shall not: (a) license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Application, (b) copy or reproduce the Application; (c) merge the Application with any other software; (d) translate, adapt, vary, or modify the Application; or (e) disassemble, decompile, or reverse engineer the Application, or otherwise attempt to derive the source code of the Application.

2.2 *Further Restrictions.* The End User shall not: (a) provide, disclose, demonstrate, or otherwise make available the Application to any third party; or (b) use the Application to provide any services or training for any third party; or (c) sell, lease, rent, transfer, hire-out, license, sub-license, assign, distribute, publish, charge, pledge, encumber, commercially exploit, or otherwise deal with the Application, or have any software/application written or developed that is based on or derived from the Application.

2.3 *Obligations.* The End User shall at all times: (a) effect and maintain adequate security measures to safeguard the Application from unauthorised access, use, and disclosure; (b) supervise and control access to and use of the Application in accordance with the provisions of this EULA; (c) provide Smooth Sailing Technologies from time to time on request with contact details for the person responsible for supervising and controlling such access and use; and (d) ensure that the Application is at all times clearly labelled as the property of Smooth Sailing Technologies. The provisions of this Clause 2.3 are without prejudice to the provisions of Clause 3.1.

## Confidential Information

3.1 *Confidentiality obligations.* As between the Parties, all Confidential Information belongs to Smooth Sailing Technologies. At all times during the term of this EULA and at all times subsequently, the End User shall: (a) maintain all Confidential Information securely and in the strictest confidence and shall respect the Smooth Sailing Technologies' rights therein; (b) not disclose or otherwise make available any Confidential Information to any third party; and (c) not use any Confidential Information for any purpose, except for the purpose of using the Application in accordance with the provisions of this EULA.

3.2 *Exceptions to obligations.* The provisions of Clause 5.1 shall not apply to Confidential Information which the End User can demonstrate by reasonable, written evidence: (a) is subsequently disclosed to the End User without any obligations of confidence by a third party who has not derived it directly or indirectly from the Licensor; or (b) is or becomes generally available to the public through no act or default of the End User or its agents, employees, or affiliates.

3.3 *Disclosure to employees, etc.* The End User shall procure that all its employees and other personnel who have access to any Confidential Information: (a) shall be made aware of, and subject to the obligations, set out in Clause 3.1; and (b) shall have entered into written undertakings of confidentiality and non-use which are at least as restrictive as Clause 3.1 and Clause 3.2 and which apply to the Confidential Information.

3.4 *Return of Confidential Information.* Upon any termination of this EULA for any reason, the End User shall: (a) return to Smooth Sailing Technologies any documents and other materials that contain any Confidential Information including all copies made, except for one (1) copy as may be necessary to be retained for the purpose of compliance with any continuing obligations under this EULA; and (b) make no further use, copy, or disclosure thereof.

## **Modifications to Application**

Smooth Sailing Technologies reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with or without notice and without liability to you.

## **Acknowledgements, Disclaimers, Etc.**

4.1 *Acknowledgements.* The End User acknowledges and agrees that software in general is not error-free and agrees that the existence of any errors in the Application shall not constitute a breach of this EULA by Smooth Sailing Technologies.

4.2 *Obligation to Correct Material Errors, etc.* If the End User discovers a material error in the functionality of the Application which substantially affects the End User's use of the Application and the End User notifies Smooth Sailing Technologies of such material error in writing within 30 days of the date of this EULA, Smooth Sailing Technologies shall use reasonable endeavours to correct, by patch or new release (at Smooth Sailing Technologies' option), that part of the Application which is affected by such material error.

4.3 *Further Support.* If the End User requires any further support and/or maintenance services in respect of the Application, the End User shall notify Smooth Sailing Technologies in writing and the Parties may discuss the possibility of entering into a support agreement.

4.4 *No Such Obligation in Certain Circumstances.* Smooth Sailing Technologies' obligations under Clause 4.2 shall be excluded in the following circumstances: (a) following willful damage

to the Application or negligence in its use; (b) where the Application has not been used, maintained, and/or stored in accordance with any instructions or recommendations given by Smooth Sailing Technologies or in accordance with the provisions of this EULA; (c) where the problem arises from software/application not supplied by the Smooth Sailing Technologies; (d) where the Application is used other than in the correct configuration; and/or (e) following any unauthorised use of or modification to the Application.

4.5 *Viruses, etc.* Smooth Sailing Technologies does not warrant that the Application supplied under this EULA shall be free from all viruses. The End User acknowledges and agrees that it is solely the End User's responsibility to conduct appropriate virus scanning of the Application prior to installation and use.

4.6 *Possible Charges.* Where a defect in the Application is found upon investigation not to be the Smooth Sailing Technologies' responsibility, Smooth Sailing Technologies reserves the right to charge the End User on a time and materials basis at Smooth Sailing Technologies then current rates for all time, costs, and expenses incurred by Smooth Sailing Technologies in consequence of such investigation.

4.7 *No Implied Warranties, etc.* The express undertakings and warranties given by Smooth Sailing Technologies in this EULA are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way, including any implied warranty of merchantability, satisfactory quality, fitness for any particular purpose. All of these are excluded to the fullest extent permitted by applicable law. Without limiting the scope of the preceding sentences, Smooth Sailing Technologies gives no warranty or guarantee that the Application will meet the End User's requirements, that the use of the Application will be uninterrupted, or that any errors and/or defects in the Application can or will be corrected.

4.8 *Indemnity.* The End User shall indemnify Smooth Sailing Technologies from and against any and all losses, damages, claims, demands, liabilities, costs, and expenses of any nature whatsoever that may be asserted against or suffered by Smooth Sailing Technologies and which relate to: (a) any use by the End User of the Application; and/or (b) the development, manufacture, use, supply, or any other dealing in any products or services that were generated from the use of the Application, including any claims based on product liability laws.

4.9 *Limit of Liability.* The cumulative maximum liability of Smooth Sailing Technologies to the End User under or in connection with this EULA, irrespective of the basis of the claim (whether in contract, tort, negligence, or otherwise), shall be limited in accordance with the provisions of this Clause 4.9:

- (a) Smooth Sailing Technologies does not seek to exclude or limit liability where such exclusion or limitation is precluded from applicable law, including any liability that may arise in respect of (i) death or personal injury resulting from Smooth Sailing Technologies' negligence, or (ii) fraud.
- (b) Subject to the rest of the provisions of this Clause 4.9, the cumulative liability of Smooth Sailing Technologies in respect of any and all claims made under or in

connection with this EULA shall not exceed an amount that is equal to \$5,000.00 USD.

- (c) Subject to Clause 4.9(a), Smooth Sailing Technologies shall in no circumstances be liable for any type of special, indirect or consequential loss, for any loss of profit, revenue, or anticipated saving, lost, incorrect or spoiled data, loss of use, loss of contracts with third parties, loss of business or loss of goodwill, even if such loss was reasonably foreseeable or Smooth Sailing Technologies had been advised of the possibility of the same arising.

## **Term and Termination**

This Agreement shall remain in effect until terminated by you or Smooth Sailing Technologies.

Smooth Sailing Technologies may, in its sole discretion, at any time and for any or no reason, suspend or terminate this Agreement with or without prior notice.

This Agreement will terminate immediately, without prior notice from Smooth Sailing Technologies, in the event that you fail to comply with any provision of this Agreement. You may also terminate this Agreement by deleting the Application and all copies thereof from your devices.

Upon termination of this Agreement, you shall cease all use of the Application and delete all copies of the Application from your devices.

5.1 *Termination by Either Party.* Either Party may terminate this EULA, and the licence granted hereunder, at any time by notice in writing to the other Party (the “**Other Party**”), such termination to take effect as specified in the notice:

- (a) if the Other Party is in material or persistent breach of any provision of this EULA and, in the case of a breach capable of remedy within 30 days, the breach is not remedied within 30 days of the Other Party receiving notice specifying the breach and requiring its remedy; or
- (b) if (i) the Other Party becomes insolvent or unable to pay its debts as and when they become due; or (ii) an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); or (iii) a liquidator, examiner, receiver, receiver manager, or trustee is appointed in respect of the whole or any part of the Other Party’s assets or business; or (iv) the Other Party makes any composition with its creditors; or (v) the Other Party ceases to continue its business; or (vi) as a result of debt and/or maladministration the Other Party takes or suffers any similar or analogous action in

any jurisdiction.

5.2 *Further Rights of Smooth Sailing Technologies to Terminate.*

- (a) Smooth Sailing Technologies may terminate this EULA, and the licence granted hereunder, at any time by notice in writing to the End User, such termination to take effect as specified in the notice, if the End User fails to pay any amount due under this EULA by the relevant due date.
- (b) In addition, this EULA, and the licence granted hereunder, shall terminate automatically if Smooth Sailing Technologies' licence in respect of the Application is terminated for any reason. In such circumstances, Smooth Sailing Technologies shall give prompt written notice thereof to the End User.

5.3 *Consequences of Termination.* In the event of any termination of this EULA for any reason:

- (a) any licence granted by Smooth Sailing Technologies under this EULA shall automatically terminate without further notice, and the End User shall make no further use of, or carry out any other activity in relation to, the Application; and
- (b) any installments of the Licence Fee due to be paid after the date of termination shall forthwith become due and payable by the End User, and Smooth Sailing Technologies shall be under no obligation to reimburse the whole or any part of the Licence Fee.

5.4 *Accrued Rights.* Termination of this EULA for any reason shall not affect the rights and obligations of the Parties accrued before termination, including any right to claim damages. The rights and obligations of the Parties set out in Clauses 3.1, 3.2, 3.3, 3.4, 4.8, 4.9, 5.3, 5.4, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7 shall survive any termination of this EULA for any reason.

## **General**

6.1 *Amendments.* This EULA may only be amended in writing signed by duly authorised representatives of Smooth Sailing Technologies and the End User.

6.2 *Invalid Clauses.* If any provision or part of this EULA is held to be invalid, amendments to this EULA may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this EULA to the maximum extent permissible under applicable law.

6.3 *No Agency.* Nothing in this EULA shall create, evidence, or imply any agency, partnership, or joint venture between the Parties. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

6.4 *Interpretation.* In this EULA:

- (a) references to persons include incorporated and unincorporated persons and references to the singular include the plural and vice versa;
- (b) references to Clauses mean clauses of this EULA;
- (c) references in this EULA to termination include termination by expiry; and
- (d) where the word “including” is used it means “including without limitation”.

6.5 *Governing Law and Jurisdiction.* The validity, construction, and performance of this EULA shall be governed by and construed in accordance with the laws of the State of Florida and shall be subject to the exclusive jurisdiction of the courts of the State of Florida to which the Parties hereby submit.

6.6 *No Use of Names, etc.* Neither Party shall use the names, marks, trade names, trademarks, crests, logos, or registered images of the other Party without that Party’s prior written consent.

6.7 *Entire Agreement.* This EULA sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral and written agreements, arrangements, or understandings between them relating to such subject matter.

## **Severability**

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## **Amendments to this Agreement**

Smooth Sailing Technologies reserves the right, at its sole discretion, to modify or replace this Agreement at any time. If a revision is a material change we will provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

## **Contact Information**

If you have any questions about this Agreement, please contact us at:

[support@smoothsailingtechnologies.com](mailto:support@smoothsailingtechnologies.com)