



SMARTTRADE LIMITED

SMARTTRADE USER AGREEMENT

Version and Updates

This version is effective February 2014. We will from time to time update this user agreement and encourage you to periodically visit this website to keep up to date.

Definitions

1. Definitions

- ✓ **we, us, our** means SmartTrade Ltd, of New Zealand
- ✓ **you** means the person, company or other entity supplied with SmartTrade by us or by a Reseller.
- ✓ **Product** means a product we sell from time to time, including *Office, Essential, Ultimate, Mobile, SmartForms, SmartTime, SmartGate*, Reports, and accounting package interfaces.
- ✓ **Report** includes standard reports, reports created using the imbedded report writer and Advanced Reports.
- ✓ **Reseller** means a person, company or entity who supplies SmartTrade to you with our authority.
- ✓ **SmartTrade** includes all Products and Services.
- ✓ **Service** includes any service we provide from time to time, including but not limited to *SmartHost, SmartSafe*, report and form customisation, support, and training.
- ✓ **Licence** means a licence to use SmartTrade, either on a fixed or recurring periodic term.
- ✓ **WSP** means a 3rd party web service provider organised by us to host applications or store data for you.

Our obligations

2. We

- 2.1** Grant you the non-transferable, non-exclusive right to use SmartTrade on any number of computers or mobile devices, provided that the number of users at any one time doesn't exceed the number of Licences issued to you for the particular Product or Service.
- 2.2** Warrant that:
 - a.** We have the authority to grant the Licences.
 - b.** SmartTrade will substantially operate in accordance with the user guides as updated from time to time.
 - c.** SmartTrade is virus free as supplied.
- 2.3** Do not represent that SmartTrade is free from bugs, errors or interruptions.
- 2.4** Will support SmartTrade for at least 3 years from the date of installation, provided in the case of an accounting package interface, the supplier of the accounting package continues to support its product.
- 2.5** Will, at our cost, provided you comply with this agreement:

- a. Correct any material bug, error or interruption in SmartTrade that you notify to us.
 - b. Correct any error in any Report or SmartForms, provided that you advise us of the error within 60 days after we provide the report or SmartForms to you.
- 2.6** Will from time to time provide and remotely install updates of SmartTrade free of charge.
- 2.7** May review the prices of SmartTrade from time to time, provided that no change will apply:
- a. In the case of SmartTrade sold for a recurring period, until the first day of the next period.
 - b. In the case of SmartTrade sold for a fixed term, until the next expiry date.
- 2.8** Will, if you send any data files to us, unless you instruct otherwise:
- a. Use these files only for the purposes for which you have sent them to us.
 - b. Not allow any other party to obtain or view the files.
 - c. If you request, delete the files and any copies within 2 business days.
- 2.9** Will use reasonable efforts to ensure that any WSP complies with the applicable Service Level Agreement.

Your obligations

3. You

- 3.1** Accept SmartTrade on the terms contained in this agreement, and agree that any additional Licences, Products and Services will also be subject to the terms of this agreement.
- 3.2** Agree that you have obtained SmartTrade for business use and made your own assessment of suitability.
- 3.3** Will not make SmartTrade available to any other person or entity, whether by way of rental, timesharing, or any other arrangement or means.
- 3.4** Will not copy, modify, reverse engineer or do any similar act with SmartTrade, nor allow anyone else to do so.
- 3.5** Will not allow any other software to be integrated with SmartTrade, without our prior written consent.
- 3.6** Will pay our invoices (inclusive of GST), unless otherwise agreed in writing:
- a. For SmartTrade supplied for recurring periods, by the first business day of each period.
 - b. Otherwise, within 5 business days after the invoice date.
- 3.7** Agree that all intellectual property rights in SmartTrade belong to us.
- 3.8** Acknowledge that any Reseller is not our agent.

Termination

4. Termination

- 4.1** The supply of SmartTrade for a recurring period ends:

- a. On the last day of a period, provided either party gives the other party at least 5 business days' notice.
 - b. By us giving you notice if a periodic payment is overdue by at least 10 business days.
- 4.2** The supply of SmartTrade for a fixed term ends on the expiry date, unless renewed for a further term.
- 4.3** The supply of SmartTrade terminates immediately if you breach any of your obligations under clauses 3.3 or 3.4.
- 4.4** Termination under this clause will not affect any rights or remedies that we may otherwise have under this agreement or at law.

Disclaimers and other legal stuff

5. Exclusion and Limitation of Liability

- 5.1** All warranties, conditions, representations, promises or statements (either expressed or implied, statutory, collateral or otherwise) that are not expressly set out in this agreement are excluded to the full extent permitted by law.
- 5.2** We are not liable for any indirect or consequential loss or loss of profits or loss of use or loss of production however caused.
- 5.3** We are not liable for any direct loss or damage arising from:
- a. Any failure of SmartTrade to integrate with or transfer data to or receive data from any other software application or system.
 - b. Any firewall, virus checker or similar application that you use that affects SmartTrade's performance.
 - c. The actions of any Reseller.
 - d. Any error or other problem in a Report or a SmartForms.
 - e. SmartTrade not operating on mobile devices. Our mobile products are developed for and tested on iOS, Windows Phone and Android devices. However, the proliferation of devices and the continuous updating of operating systems (and with Android, device suppliers having to port each update to each device) makes it impossible to guarantee that SmartTrade will operate reliably on all mobile devices.
 - f. A WSP not complying with its Terms of Service and/or Service Level Agreement.
- 5.4** Our aggregate liability for damage or loss is limited to the total of the fees and charges paid by you to us.

6. General Terms

- 6.1** Failure or delay to enforce any provisions of this agreement will not waive our rights.
- 6.2** This agreement is subject to the laws of and to the non-exclusive jurisdiction of the courts of New Zealand.