

smartsimple

DATA PROCESSING ADDENDUM (GDPR, and EU Standard Contractual Clauses)

(Rev. April 20, 2018)

This Data Processing Addendum (“**DPA**”) forms part of the Master Subscription Agreement or other written or electronic agreement between SmartSimple Software Ltd., SmartSimple Software Inc., and SmartSimple Software Ireland Limited. (collectively, “**SmartSimple**”) and Customer for the purchase of online services (including associated SmartSimple offline or mobile components) from SmartSimple (identified either as “Services” or otherwise in the applicable agreement, and hereinafter defined as “Services”) (“the Agreement”) to reflect the parties’ agreement with regard to the Processing of Personal Data.

By signing the Agreement, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent SmartSimple processes Personal Data for which such Authorized Affiliates qualify as the Controller. For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Authorized Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services to Customer pursuant to the Agreement, SmartSimple may Process Personal Data on behalf of Customer and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

HOW TO EXECUTE THIS DPA:

1. This DPA consists of two parts: the main body of the DPA, and Schedules 1, 2, and 3 (including Appendices 1 to 2).
2. This DPA has been pre-signed on behalf of SmartSimple. The Standard Contractual Clauses in Schedule 3 have been pre-signed by SmartSimple, as the data importer.
3. To complete this DPA, Customer must:
 - a. Complete the information in the signature box and sign on Page 7
 - b. Complete the information as the data exporter on Page 12
 - c. Complete the information in the signature box and sign on Pages 17, 19 and 20
4. Send the completed and signed DPA to SmartSimple by email, indicating the Customer’s Account Number (as set out on the applicable SmartSimple Order Form or invoice), and if applicable, the contact details indicating the Customer’s Data Protection Officer, and/ or EU Representative, to gdpr@smartsimple.com

Upon receipt of the validly completed DPA by SmartSimple at this email address (gdpr@smartsimple.com), this DPA will become legally binding.

HOW THIS DPA APPLIES

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the SmartSimple entity that is party to the Agreement is party to this DPA.

If the Customer entity signing this DPA has executed an Order Form with SmartSimple or its Affiliate pursuant to the Agreement, but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms, and the SmartSimple entity that is party to such Order Form is party to this DPA.

If the Customer entity signing this DPA is neither a party to an Order Form nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA.

If the Customer entity signing the DPA is not a party to an Order Form nor a Master Subscription Agreement directly with the SmartSimple, but is instead a customer indirectly via an authorized reseller of SmartSimple services, this DPA is not valid and is not legally binding. Such entity should contact the authorized reseller to discuss whether any amendment to its agreement with that reseller may be required.

This DPA shall not replace any comparable or additional rights relating to Processing of the Customer Data contained in Customer's Agreement (including any existing data processing addendum to the Agreement)

DATA PROCESSING TERMS

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Authorized Affiliate" means any of the Customer's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Services pursuant to the Agreement between Customer and SmartSimple, but has not signed its own Order Form with SmartSimple and is not a "Customer" as defined under the Agreement.

"Controller" means the entity which determines the purposes and means of the Processing of Personal Data.

"Customer Data" means what is defined in the Agreement as "Customer Data" or "Your Data."

"Data Protection Laws and Regulations" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data under the Agreement.

"Data Subject" means the identified or identifiable person to whom Personal Data relates.

"GDPR" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

"Personal Data" means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Customer Data.

"Processing" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Processor" means the entity which Processes Personal Data on behalf of the Controller.

"Security, Privacy, and Architecture Documentation" means SmartSimple's Security, Privacy, and Architecture Documentation available at smartsimple.com/agreements.html

“SmartSimple” means the SmartSimple entity which is a party to this DPA, as specified in the sections “HOW THIS DPA APPLIES” above, SmartSimple Software Ltd., a Delaware Corporation; SmartSimple Software Inc., A federally incorporated corporation; SmartSimple Software Ireland Limited., as applicable. Additionally, SmartSimple means SmartSimple and its Affiliated engaged in the Processing of Personal Data.

“Standard Contractual Clauses” means the agreement executed by and between Customer and SmartSimple and attached hereto as Schedule 3 pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

“Subprocessor” means any Processor engaged by SmartSimple or a member of the SmartSimple.

“Supervisory Authority” means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. PROCESSING OF PERSONAL DATA

2.1 Roles of the Parties. The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, SmartSimple is a Processor and that SmartSimple or members of the SmartSimple will engage Sub-processors pursuant to the requirements set forth in Section 5 “Sub-processors” below.

2.2 Customer’s Processing of Personal Data. Customer shall, in its use of the Services, Process Personal Data in accordance with the requirement of Data Protection Laws and Regulations. For the avoidance of doubt, Customer’s instructions for the Processing of Personal Data shall comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

2.3 SmartSimple’s Processing of Personal Data. SmartSimple shall treat Personal Data as Confidential Information and shall only Process Personal Data on behalf of and in accordance with Customer’s documented instructions for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

2.4 Details of the Processing. The subject-matter of Processing of Personal Data by SmartSimple is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Schedule 2 (Details of the Processing) to this DPA.

3. RIGHTS OF DATA SUBJECTS

3.1 Data Subject Request. SmartSimple shall, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject to access, correct, or delete that person’s Personal Data or if a Data Subject objects to the Processing thereof (“Data Subject Request”). SmartSimple shall not respond to a Data Subject Request without Customer’s prior written consent except to confirm that such request relates to Customer to which Customer hereby agrees. To the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, SmartSimple shall upon Customer’s request provide commercially reasonable assistance to facilitate such Data Subject Request to the extent SmartSimple is legally permitted to do so and provided that such Data Subject Request is exercised in accordance with Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from SmartSimple’s provision of such assistance.

3.2 Data Subject Request. With effect from 25 May 2018, the following wording will replace Clause 3.1 (“Data Subject Request”) in its entirety: **Data Subject Requests.** *SmartSimple shall, to the extent legally permitted, promptly notify Customer if SmartSimple receives a request from a Data Subject to exercise the Data Subject’s right of access, right to rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, object to the Processing, or its right not to be subject to an automated individual decision making (“Data Subject Request”). Taking into account the nature of the Processing, SmartSimple shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer’s obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, SmartSimple shall upon Customer’s request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent SmartSimple is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from SmartSimple’s provision of such assistance.*

4. SMARTSIMPLE PERSONNEL

4.1 Confidentiality. SmartSimple shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. SmartSimple shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

4.2 Reliability. SmartSimple shall take commercially reasonable steps to ensure the reliability of any SmartSimple personnel engaged in the Processing of Personal Data.

4.3 Limitation of Access. SmartSimple shall ensure that SmartSimple’s access to Personal Data is limited to those personnel performing Services in accordance with the Agreement.

4.4 Data Protection Officer. SmartSimple has appointed a data protection officer. The appointed person may be reached at gdpr@smartsimple.com

5. SUB-PROCESSORS

5.1 Appointment of Sub-processors. Customer acknowledges and agrees that (a) SmartSimple’s Affiliates may be retained as Sub-processors; and (b) SmartSimple and SmartSimple’s Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. SmartSimple or a SmartSimple Affiliate has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this Agreement with respect to the protection of Customer Data to the extent applicable to the nature of the Services provided by such Sub-processor.

5.2 List of Current Sub-processors and Notification of New Sub-processors. A list of Sub-processors as of 1 April 2018 is available in SmartSimple’s “Security, Privacy, and Architecture Documentation.” Upon request, SmartSimple shall make available to Customer an updated list of Sub-processors for the SCC Services with the identities of those Sub-processors and their country of location. (“Updated Sub-processor List”)

5.3 Objection Right for New Sub-processors. Customer may object to SmartSimple's use of a new Sub-processor by notifying SmartSimple promptly in writing within ten (10) business days after receipt of SmartSimple's notice. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, SmartSimple will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If SmartSimple is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by SmartSimple without the use of the objected-to new Sub-processor by providing written notice to SmartSimple. SmartSimple will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

5.4 Liability. SmartSimple shall be liable for the acts and omissions of its Sub-processors to the same extent SmartSimple would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the agreement.

6. SECURITY

6.1 Controls for the Protection of Customer Data. SmartSimple shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer data), confidentiality and integrity of Customer Data, including Personal Data, in accordance with Appendix 2 to Schedule 3 (Standard Contractual Clauses)(Security, Privacy, and Architecture Documentation). SmartSimple regularly monitors compliance with these measures. SmartSimple will not materially decrease the overall security of the Services during a subscription term.

6.2 Third-Party Certifications and Audits. SmartSimple will obtain the third-party certifications and audits set forth in Appendix 2 to the Standard Contractual Clauses. Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Agreement, SmartSimple shall make available to Customer that is not a competitor of SmartSimple (or Customer's independent, third-party auditor that is not a competitor of SmartSimple) a copy of SmartSimple's then most recent third-party audits or certifications, as applicable.

7. CUSTOMER DATA INCIDENT MANAGEMENT AND NOTIFICATION

SmartSimple maintains security incident management policies and procedures specified in "Security, Privacy, and Architecture Documentation," and shall notify Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data, including Personal Data, transmitted, stored or otherwise Processed by SmartSimple or its Sub-processors of which SmartSimple becomes aware (a "**Customer Data Incident**"). SmartSimple shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as SmartSimple deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within SmartSimple's reasonable control. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Users.

8. RETURN AND DELETION OF CUSTOMER DATA

SmartSimple shall return Customer Data to Customer and, to the extent allowed by applicable law, delete Customer Data in accordance with the procedures and timeframes specified in the Agreement.

9. AUTHORIZED AFFILIATES

9.1 Contractual Relationship. The parties acknowledge and agree that, by executing the Agreement, the Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates, thereby establishing a separate DPA between SmartSimple and each such Authorized Affiliate subject to the provisions of the Agreement and this Section 9 and Section 10. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement, and is only a party to the DPA. All access to and use of the Services and Content by Authorized Affiliates must comply with the terms and conditions of the Agreement, and any violation of the terms and conditions of the Agreement by an Authorized Affiliate shall be deemed a violation by Customer.

9.2 Communication. The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with SmartSimple under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.

9.3 Rights of Authorized Affiliates. Where an Authorized Affiliate becomes a party to the DPA with SmartSimple, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and seek remedies under this DPA, subject to the following:

9.3.1 Except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against SmartSimple directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Authorized Affiliate individually but in a combined manner for all of its Authorized Affiliates together (as set forth, for example, in Section 9.3.2, below).

9.3.2 The Parties agree that the Customer that is the contracting party to the Agreement shall, when carrying out an on-site audit of the procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on SmartSimple and its Sub-processors by combining, to the extent possible, several audit requests carried out on behalf of different Authorized Affiliates in one single audit.

10. LIMITATION OF LIABILITY

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and SmartSimple, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together.

For the avoidance of doubt, SmartSimple's and its Affiliates' total liability for all claims from the Customer and all of its Authorized Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under this Agreement, including by Customer and all Authorized Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Authorized Affiliate that is a contractual party to any such DPA.

Also for the avoidance of doubt, each reference to the DPA in this DPA means this DPA including its Schedules and Appendices.

11. EUROPEAN SPECIFIC PROVISIONS

11.1 GDPR. With effect from 25 May 2018, SmartSimple will Process Personal Data in accordance with the GDPR requirements directly applicable to SmartSimple's provision of its Services.

11.2 Data Protection Impact Assessment. With effect from 25 May 2018, upon Customer's request, SmartSimple shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to SmartSimple. SmartSimple shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to Section 11.2 of this DPA, to the extent required under the GDPR.

11.3 Transfer mechanism for data transfers. Subject to the terms of this DPA, SmartSimple makes available the transfer mechanism listed below which shall apply, to any transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations:

The Standard Contractual Clauses set forth in Schedule 3 to this DPA apply to the Services and are subject to the additional terms in Section 3 of Schedule 1 (Transfer Mechanism for European Data Transfers).

12. PARTIES TO THIS DPA

The Section "HOW THIS DPA APPLIES" specifies which SmartSimple entity is party to this DPA. In addition, SmartSimple is a party to the Standard Contractual Clauses in Schedule 3. Notwithstanding the signatures below of any other SmartSimple entity, such other SmartSimple entities are not a party to this DPA or the Standard Contractual Clauses. Where SmartSimple is a different legal entity than SmartSimple, SmartSimple is carrying out the obligations of the data importer as set out in Schedule 3 "Standard Contractual Clauses" on behalf of SmartSimple.

13. LEGAL EFFECT

This DPA shall only become legally binding between Customer and SmartSimple when the formalities steps set out in the Section "HOW TO EXECUTE THIS DPA" above have been fully completed.

List of Schedules

Schedule 1: Transfer Mechanism

Schedule 2: Details of the Processing

Schedule 3: Standard Contractual Clauses

The parties' authorised signatories have duly executed this Agreement:

Customer

Signature: _____
Customer Legal Name: _____
Print Name: _____
Title: _____
Date: _____

SMARTSIMPLE SOFTWARE LTD

Signature: _____
Print Name: _____
Title: Chief Operating Officer
Date: April 25th 2018

SMARTSIMPLE SOFTWARE INC.

Signature: _____
Print Name: _____
Title: Chief Operating Officer
Date: April 25th 2018

SMARTSIMPLE SOFTWARE IRELAND LIMITED

Signature: _____
Print Name: _____
Title: Chief Operating Officer
Date: April 25th 2018

SCHEDULE 1 - TRANSFER MECHANISM FOR EUROPEAN DATA TRANSFERS

ADDITIONAL TERMS FOR SCC SERVICE

1. Customers covered by the Standard Contractual Clauses. The Standard Contractual Clauses and the additional terms specified in this Section of this Schedule (1) apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Authorized Affiliates and, (ii) all Affiliates of Customer established within the European Economic Area, Switzerland and the United Kingdom, which have signed Order Forms for the SCC Services. For the purpose of the Standard Contractual Clauses and this Section, the aforementioned entities shall be deemed “data exporters”.

2. Instructions. This DPA and the Agreement are Customer’s complete and final documented instructions at the time of signature of the Agreement to SmartSimple for the Processing of Personal Data. Any additional or alternate instructions must be agreed upon separately. For the purposes of Clause 5(a) of the Standard Contractual Clauses, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Agreement and applicable Order Form(s); (b) Processing initiated by Users in their use of the SCC Services and (c) Processing to comply with other reasonable documented instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

3. Appointment of new Sub-processors and List of current Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that (a) SmartSimple’s Affiliates may be retained as Sub-processors; and (b) SmartSimple and SmartSimple’s Affiliates respectively may engage third-party Sub-processors in connection with the provision of the SCC Services. SmartSimple shall make available to Customer the current list of Sub-processors in accordance with Section 5.2 of this DPA

4. Notification of New Sub-processors and Objection Right for new Sub-processors. Pursuant to Clause 5(h) of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that SmartSimple may engage new Subprocessors as described in Sections 5.2 and 5.3 of the DPA.

5. Copies of Sub-processor Agreements. The parties agree that the copies of the Sub-processor agreements that must be provided by SmartSimple to Customer pursuant to Clause 5(j) of the Standard Contractual Clauses may have all commercial information, or clauses unrelated to the Standard Contractual Clauses or their equivalent, removed by SmartSimple beforehand; and, that such copies will be provided by SmartSimple, in a manner to be determined in its discretion, only upon request by Customer.

6. Audits and Certifications. The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses shall be carried out in accordance with the following specifications: Upon Customer’s request, and subject to the confidentiality obligations set forth in the Agreement, SmartSimple shall make available to Customer that is not a competitor of SmartSimple (or Customer’s independent, third-party auditor that is not a competitor of SmartSimple) information regarding the SmartSimple’s compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits set forth in the SmartSimple’s “Security, Privacy, and Architecture Documentation” to the extent SmartSimple makes them generally available to its customers. Customer may contact SmartSimple in accordance with the “Notices” Section of the Agreement to request an on-site audit of the procedures relevant to the protection of Personal Data. Customer shall reimburse SmartSimple for any time expended for any such on-site audit at the SmartSimple’s then-current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and SmartSimple shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by SmartSimple. Customer shall promptly notify SmartSimple with information regarding any non-compliance discovered during the course of an audit.

7. Certification of Deletion. The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by SmartSimple to Customer only upon Customer’s request.

8. Conflict. In the event of any conflict or inconsistency between the body of this DPA and any of its Schedules (not including the Standard Contractual Clauses) and the Standard Contractual Clauses in Schedule 3, the Standard Contractual Clauses shall prevail.

SCHEDULE 2 - DETAILS OF THE PROCESSING

Nature and Purpose of Processing

SmartSimple will Process Personal Data as necessary to perform the Services pursuant to the Agreement, as further specified in the Documentation, and as further instructed by Customer in its use of the Services.

Duration of Processing

Subject to Section 8 of the DPA, SmartSimple will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

Categories of Data Subjects

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospects, customers, business partners and vendors of Customer (who are natural persons)
- Employees or contact persons of Customer's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of Customer (who are natural persons)
- Customer's Users authorized by Customer to use the Services

Type of Personal Data

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title
- Position
- Employer
- Contact information (company, email, phone, physical business address)
- ID data
- Professional life data
- Personal life data
- Connection data
- Localisation data

SCHEDULE 3 - STANDARD CONTRACTUAL CLAUSES

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organisation: _____

Address: _____

Tel.: _____ fax: _____ e-mail: _____

Other information needed to identify the organisation:

.....

(the data **exporter**)

And

Name of the data importing organisation: SmartSimple Software

Address: 111 Peter Street, Suite 405, Toronto, Ontario, Canada, M5V 2G9

Tel.: 416.591.1668 fax: 1.866.239.0991 e-mail: gdpr@smartsimple.com

Other information needed to identify the organisation: Not applicable

(the data **importer**)

Each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

(a) *'personal data'*, *'special categories of data'*, *'process/processing'*, *'controller'*, *'processor'*, *'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) *'the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such thirdparty liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about: (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation, (ii) any accidental or unauthorised access, and (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered online by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): _____
Position: _____
Address: _____

Other information necessary in order for the contract to be binding (if any):

Signature
(stamp of organisation)

On behalf of the data importer:

Name (written out in full): Michael Reid
Position: Chief Operating Officer
Address: 111 Peter Street, Suite 405, Toronto, Ontario, Canada, M5V 2G9

Other information necessary in order for the contract to be binding (if any):

Signature
(stamp of organisation)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

Data exporter is (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and, (ii) all Affiliates (as defined in the Agreement) of Customer established within the European Economic Area (EEA) and Switzerland that have purchased Services on the basis of one or more Order Form(s).

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

SmartSimple Software is a provider of enterprise cloud computing solutions which processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

Data Subjects

The personal data transferred concern the following categories of data subjects (please specify):

Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospects, customers, business partners and vendors of data exporter (who are natural persons)
- Employees or contact persons of data exporter's prospects, customers, business partners and vendors
- Employees, agents, advisors, freelancers of data exporter (who are natural persons)
- Data exporter's Users authorized by data exporter to use the Services

Categories of data

The personal data transferred concern the following categories of data (please specify):

Data exporter may submit Personal Data to the SCC Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- First and last name
- Title
- Position
- Employer
- Contact information (company, email, phone, physical business address)
- ID data
- Professional life data
- Personal life data
- Connection data
- Localisation data

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

Data exporter may submit special categories of data to the SCC Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which is for the sake of clarity Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The objective of Processing of Personal Data by data importer is the performance of the SCC Services pursuant to the Agreement.

DATA EXPORTER

Name: _____

Authorised Signature: _____

DATA IMPORTER

Name: Michael Reid _____

Authorised Signature: _____

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/ legislation attached):

Data importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Data uploaded to the Services, as described in SmartSimple's "Security, Privacy, and Architecture Documentation," accessible via www.smartsimple.com/agreements.html. Data Importer will not materially decrease the overall security of the Services during a subscription term.

DATA EXPORTER

Name: _____

Authorised Signature: _____

DATA IMPORTER

Name: Michael Reid _____

Authorised Signature: _____