

## 1. Definitions and interpretation

**we, us, our** means SmartTrade Ltd, of New Zealand

**you** means the person, company or other entity supplied with **SBO** by us or by a Reseller.

**Day** means calendar day unless otherwise stated.

**Inactive** means that no user has logged into your **SBO** for 2 consecutive calendar months.

**Interface** means a connection to a 3<sup>rd</sup> party software application.

**PIP** means our Privacy and Information Policy found at [www.smartbizonline.com/Legal](http://www.smartbizonline.com/Legal).

**Reseller** means a person, company or entity who supplies **SBO** to you with our authority.

**SBO** means the **smartbiz online** cloud based software, including **sboMobile**, **interfaces**, and **Services**.

**sboMobile** means the native application designed for mobile devices that run on iOS or Android.

**Services** include but are not limited to report and form customisation, technical and functional support, and training.

**Subscription** means a non-transferable, non-exclusive right to use **SBO**.

## 2. You

- 2.1. Will use **SBO** only for business purposes and will make your own assessment of its suitability.
- 2.2. May cancel your **subscription** at any time by giving notice to us, or by allowing your **subscription** to become **inactive**.
- 2.3. Own your information stored in **SBO**, in accordance with our **PIP** as amended from time to time.
- 2.4. Will, unless otherwise agreed in writing, pay our invoices (including tax where applicable and without deduction or set-off) within 14 days of the invoice date, or by the next business day if the due date falls on a weekend or public holiday.
- 2.5. Agree that we may reverse any discounts allowed in an invoice if you fail to pay by the due date.
- 2.6. Agree that all intellectual property rights in **SBO** belong to us and that you will not:
  - a. Make **SBO** available to any other person or entity by way of subscription, rental, shareware, freeware or otherwise.
  - b. Copy, modify, reverse engineer or do any similar act with **SBO**, nor allow anyone else to do so.
- 2.7. Will not allow any other software to be integrated with **SBO**, without our prior written consent.
- 2.8. Acknowledge that any **Reseller** is not our agent.
- 2.9. Will give any notices to us by email to [notices@smartbizonline.com](mailto:notices@smartbizonline.com)

## 3. We

- 3.1. Warrant that **SBO** will operate substantially in accordance with the user guides and help pages as updated from time to time, but do not represent that **SBO** is free from bugs, errors or interruptions.
- 3.2. Will support **SBO** for at least 3 years from the date that you first subscribe, provided that in the case of an **interface**, the 3<sup>rd</sup> party continues to support its product and to allows **SBO** to connect.
- 3.3. Will, at our cost, provided you comply with this agreement:
  - a. Correct any material bug, error or interruption in **SBO** that you notify to us.
  - b. Remedy any defect in any **Service**, provided that you advise us of the defect within 60 days after we provide the **Service** to you.
- 3.4. May change our prices from time to time, provided we give you least 30 days' notice of any change.
- 3.5. Will collect and manage personal information and deal with your business information in accordance with our **PIP**.
- 3.6. May cancel your **subscription** immediately if:
  - a. We notify you of a breach of this agreement and you fail to remedy the breach within 14 days; or
  - b. Your subscription becomes **inactive**; or
  - c. You breach clause 2.6.
- 3.7. May cancel your **subscription** by giving at least 180 days' notice of termination.
- 3.8. Will give notices to you by email to the addresses listed in the "Send notices to these emails" field in the Settings/Business Information page in your **SBO**.
- 3.9. May revise the terms of this agreement from time to time by giving you at least one month's notice.

## 4. Exclusion and Limitation of Liability

- 4.1. 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.
- 4.2. We are not liable for any indirect or consequential loss or loss of profits or loss of use or loss of production however caused.
- 4.3. We are not liable for any direct loss or damage arising from:
  - a. Any failure of **SBO** to interface with or transfer data to or receive data from any 3<sup>rd</sup> party software application or system.
  - a. Poor performance due to your internet connection being slow.
  - b. Any software that that you use that affects **SBO**'s performance, including but not limited to operating systems, internet browsers, firewalls and virus checkers.
  - c. Viruses from files that you import into or upload to **SBO**.
  - d. The actions of any **Reseller**.

- e. Any defect in a **Service** that we provide to you (we are liable to remedy the defect in accordance with clause 3.3b).
  - f. **sboMobile** not operating on mobile devices. Testing all device/operating system combinations is impractical given the proliferation of devices and the continuous updates of iOS and Android.
  - g. A web service provider not complying with the applicable Terms of Service or Service Level Agreement despite our reasonable efforts to ensure such compliance.
- 4.4. Our aggregate liability for damage or loss is limited to the total of the amounts paid by you to us in the 2 years preceding the date that you first claim this loss or damage.

#### **5. Other**

- 5.1. Cancellation of your **SBO** subscription will not affect any rights or remedies that we may otherwise have under this agreement or at law.
- 5.2. Failure or delay to enforce any provisions of this agreement will not waive our rights.
- 5.3. This agreement constitutes the entire agreement between us and you, and it replaces all negotiations, representations, warranties, understanding and agreements, whether oral or written, between you and us with respect to matters covered in this agreement.
- 5.4. This agreement is subject to the laws of and the exclusive jurisdiction of the courts of New Zealand.