SMACKDAB INC. OFFICIAL POLICY

TERMS OF SERVICE

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SMACKDAB INC. TERMS OF SERVICE

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Version: 7.8 – Free-account inactivity and export safeguards

Revision notice: The new inactivity provisions take effect for each existing customer only as described in Section 3.4(f); this revision date is not an enforcement start date.

Document Location: https://smackdab.ai/legal/terms-of-service

INTRODUCTION

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THIS IS A BINDING LEGAL AGREEMENT BETWEEN YOU (THE "CUSTOMER") AND SMACKDAB INC. ("SMACKDAB," "COMPANY," "WE," "US," OR "OUR"). IT GOVERNS YOUR ACCESS TO AND USE OF OUR SOFTWARE-AS-A-SERVICE (THE "SERVICE"). THIS AGREEMENT INCLUDES A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 14, WHICH AFFECTS YOUR RIGHTS ON HOW TO RESOLVE DISPUTES. YOU HAVE A RIGHT TO OPT OUT OF THE BINDING ARBITRATION PROVISION AS DESCRIBED IN SECTION 14.8.

IMPORTANT NOTICE REGARDING ARBITRATION: This Agreement contains a binding arbitration clause in Section 14 and a class action waiver.

You have the right to opt out of arbitration by sending written notice to legal@smackdab.ai within 30 days of accepting this Agreement.

See Section 14.8 for complete details on how to exercise your opt-out right.

These Terms of Service (the "**Agreement**" or "**TOS**") are entered into by and between Smackdab Inc., a Florida corporation with its principal place of business in Collier County, Florida, and the entity or individual registering for, accessing, or using the Services ("**Customer**," "**you**," or "**your**").

By accessing or using the Services, clicking a box indicating acceptance, creating an account, executing an Order Form that references this Agreement, or otherwise manifesting your assent, you agree to be bound by this Agreement.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates.

You may not access the Services if you are our direct competitor, except with our prior written consent.

You may not access the Services for purposes of monitoring their availability, performance, or functionality, or for benchmarking or competitive purposes.

Smackdab may modify this Agreement as detailed in **Section 15.16** (Modifications to Agreement).

1. DEFINITIONS

For the purposes of this Agreement, capitalized terms have the meanings set forth below or in context.

1.1. "Acceptable Use Policy (AUP)" Smackdab's Acceptable Use Policy, located at https://smackdab.ai/legal/acceptable-use-policy, as updated.

1.2. Affiliate Any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity, with "control" meaning ownership of more than 50% of voting interests.

1.3. Agreement These Terms of Service, including any Order Forms, exhibits, schedules, addenda, and policies incorporated by reference (Privacy Policy, AUP, Voice & Messaging Policy, Product-Specific Terms (PST), DPA, Security Policy, Cookie Policy, DMCA Policy, Billing Policies, Payment Processing Agreement, API Terms of Use, Beta/Early Access Terms, and BAA if applicable).

1.4. AI Features Any features within the Service that utilize artificial intelligence or machine learning.

1.5. API Smackdab's application programming interfaces and associated documentation or software.

1.6. Applicable Law All laws, statutes, ordinances, rules, regulations, codes, and licensing requirements applicable to the subject matter, including data protection laws, employment laws, consumer protection laws, and industry-specific regulations.

1.7. Authorized User Any employee, contractor, consultant, agent, or representative of Customer or its Affiliates who is authorized by Customer to access and use the Services on Customer's behalf and who has been provided login credentials or otherwise authorized by Customer. Authorized Users must be at least 18 years of age or the age of majority in their jurisdiction, whichever is higher.

1.8. Billing Period The duration specified in the applicable Order Form during which Fees are calculated and billed to Customer.

1.9. Business Associate Agreement (BAA) Smackdab's Business Associate Agreement for HIPAA-regulated entities, incorporated by reference where applicable.

1.10. Claim Any demand, suit, action, proceeding, or investigation.

1.11. Confidential Information As defined in Section 7.1.

1.12. Cookies and Similar Technologies As described in the Cookie Policy located at https://smackdab.ai/legal/cookie-policy

1.13. Cookie Policy Smackdab's Cookie Policy located at https://smackdab.ai/legal/cookie-policy

1.14. Data Processing Addendum (DPA) Smackdab's Data Processing Addendum located at https://smackdab.ai/legal/data-processing-addendum , incorporated by reference where Smackdab processes Personal Data on behalf of Customer.

1.15. Data Protection Laws All applicable laws and regulations relating to the privacy, data protection, and security of Personal Data, including GDPR, UK GDPR, CCPA, CPRA, VCDPA, CPA, CTDPA, UCPA, and Florida's SB 262.

1.16. Deliverables Any reports, software code, documentation, or other materials created or developed by Smackdab specifically for Customer as part of Professional Services.

1.17. DMCA Policy Smackdab's DMCA/Copyright Policy located at https://smackdab.ai/legal/dmca-copyright-policy.

1.18. Documentation Official user guides, specifications, knowledge base articles, help documentation, and other technical materials provided by Smackdab relating to the operation and use of the Services.

1.19. Downtime The period during which the core functionalities of the Service are unavailable to Customer, excluding Scheduled Maintenance and Excusable Downtime, as further defined in the PST.

1.20. Effective Date The earlier of (a) the date Customer first accepts this Agreement, (b) the effective date set forth on the initial Order Form, or (c) the date Customer first accesses or uses the Services.

1.21. Customer The individual or legal entity identified in the account registration or applicable Order Form as the purchaser or user of the Services.

1.22. Customer Data All electronic data, text, messages, communications, files, documents, images, audio, video, contact information, sales pipeline data, customer interactions, financial data, and other materials submitted to, stored in, processed by, or transmitted through the Services by Customer, its Affiliates, or Authorized Users. Customer Data excludes Feedback, Usage Data, and any outputs generated by AI Features. Customer Data is Customer's Confidential Information.

1.23. Feedback Any suggestions, comments, ideas, improvements, enhancement requests, recommendations, bug reports, or other feedback provided by Customer relating to the Services, Documentation, or other Smackdab offerings. All Feedback is assigned to Smackdab and is Smackdab's sole property.

1.24. Fees The charges specified in the applicable Order Form(s) or otherwise agreed upon for subscription to the Services, Professional Services, or other offerings.

1.25. Force Majeure Event Any unforeseen event beyond a party's reasonable control, as further defined in Section 15.6.

1.26. Free Services The Subscription Service or other products or features made available by Smackdab to Customer on an unpaid trial or free basis, including any "free tier" of the Service.

1.27. GDPR The General Data Protection Regulation (EU) 2016/679.

1.28. HIPAA The Health Insurance Portability and Accountability Act of 1996, as amended.

1.29. Initial Subscription Term The initial period of the subscription to the Services as specified in the applicable Order Form.

1.30. Intellectual Property Rights Any and all registered and unregistered rights granted or in existence under patent, copyright, trademark, trade secret, database protection, or other intellectual property laws.

1.31. Malicious Code Viruses, worms, time bombs, Trojan horses, and other harmful or malicious code.

1.32. Order Form An ordering document, quote, online order, or subscription activation form specifying the Services or Professional Services, Fees, Subscription Term, Authorized Users, and other commercial terms, incorporated herein by reference and subject to Section 15.7.

1.33. Personal Data Any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws.

1.34. PHI Protected Health Information as defined under HIPAA.

1.35. Platform The specific Smackdab proprietary software-as-a-service platform made available by Smackdab to Customer via the internet.

1.36. Privacy Policy Smackdab's Privacy Policy located at https://smackdab.ai/legal/privacy-policy, describing how Smackdab collects, uses, discloses, and protects Personal Data, incorporated herein by reference.

1.37. Professional Services Implementation, configuration, consulting, training, integration, custom development, or other professional services related to the Services purchased by Customer.

1.38. Renewal Subscription Term Each subsequent renewal period for the subscription following the Initial Subscription Term.

1.39. Security Policy Smackdab's Security Policy located at https://smackdab.ai/legal/security-policy, incorporated herein by reference.

1.40. Service or Services The subscription-based access to and use of the Smackdab software, Platform, and associated functionalities as specified in the applicable Order Form and further described in the Documentation. Services include related Documentation, Support Services, APIs, software clients, and Updates, and exclude Beta Services and Professional Services unless otherwise specified.

1.41. Scheduled Maintenance Routine maintenance performed by Smackdab, as further defined in the PST.

1.42. Product-Specific Terms (PST) The specific terms, conditions, and service level commitments for various Smackdab products and services, as detailed in Section 16.

1.43. Subscription Term The period during which Customer is authorized to access the Services, commencing on the Effective Date and continuing for the Initial Subscription Term and any applicable Renewal Subscription Terms.

1.44. Taxes Any and all applicable taxes, levies, duties, or similar governmental assessments, excluding only taxes based solely on Smackdab's net income.

1.45. Third-Party Applications Web-based, mobile, offline, or other software applications, functionalities, data sources, services, or platforms provided by third parties that may interoperate with the Services.

1.46. Updates Enhancements, improvements, bug fixes, patches, new features, or other modifications to the Services released by Smackdab.

1.47. Usage Data Anonymized or aggregated data collected by Smackdab regarding the access and use of the Services by Customer and its Authorized Users. Usage Data does not identify Customer or any individual and is Smackdab's property.

1.48. User An Authorized User as defined in Section 1.7.

1.49. Commercially Reasonable Efforts Efforts consistent with industry practices for similar services, but does not impose unreasonable burdens or delays on the performing party.

1.50. Material Change Any modification to this Agreement, the Services, or incorporated policies that: (1) modifies payment terms or pricing structure; (2) reduces service availability commitments or support service levels; (3) materially changes data handling, security measures, or privacy practices; (4) materially modifies core functionality of the Services; or (5) any other change that a reasonable customer in Customer's position would consider important to the value or nature of the Agreement.

1.51. Service Tiers The different subscription levels offered by Smackdab, which may include: **\- Trial or Free Services:** Provided at no cost with specified feature limitations and no service level commitments **\- Commercial Services:** Standard subscription tier with defined uptime commitments and support service levels as specified in the applicable Order Form or PST **\- Enterprise Services:** Premium subscription tier with custom uptime commitments, support service levels, and terms negotiated per Order Form

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2. SCOPE OF SERVICE AND LICENSE GRANT

Summary: This section outlines the specific services Smackdab provides under the agreement, the license granted to the Customer to use these services, and crucial restrictions on that use. It details what Customers are permitted and prohibited from doing with the Service, references the Acceptable Use Policy, and covers usage limits, service updates, and specific terms for Free Services and Beta Services.

2.1. Provision of Services. Subject to Customer's compliance with this Agreement (including timely payment of Fees for paid Services) and the applicable Order Form(s), Smackdab grants Customer a limited, non-exclusive, non-transferable (except as expressly permitted in Section 15.4), non-sublicensable, revocable (in accordance with Section 9), worldwide right during the applicable Subscription Term to access and use the Services (including the functionalities, modules, and AI Features specified in the Order Form and further described in the Documentation or applicable Services Description document referenced in Section 1.43) and Documentation, solely for Customer's internal business operations, by the number of Authorized Users and within any other usage limits (e.g., data storage, contact limits, feature access, API call volume) specified in the Order Form or Documentation.

2.2. Usage Restrictions.

Customer shall not, and shall not permit any Authorized User or third party to:

(a) Reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code, trade secrets, or algorithms underlying the Services;

(b) Rent, lease, lend, sell, transfer, assign, pledge, or otherwise encumber the Services or any portion thereof;(c) Remove, alter, or obscure any proprietary notices, labels, or marks on the Services;

(d) Use the Services to provide services to third parties (except as may be expressly permitted in an Order Form);

(e) Use the Services for any illegal purpose or in violation of Applicable Law or this Agreement;

(f) Violate the Acceptable Use Policy;

(g) Use the Services to develop, facilitate, or support any competing product or service; (h) Interfere with or disrupt the normal operation of the Services or systems or networks connected to the Services;

(i) Attempt to gain unauthorized access to the Services or related systems or networks; (j) Use the Services in

any manner that could damage, disable, overburden, or impair Smackdab's systems or networks; (k) Introduce Malicious Code into the Services; (l) Use the Services to transmit or process illegal, threatening, abusive, defamatory, obscene, or otherwise harmful materials.

2.3. Updates and Modifications Smackdab may provide Updates to the Services at any time without notice. Updates may modify the Services' appearance, functionality, or user experience. Smackdab is not obligated to provide Updates but may do so in its sole discretion. Customer's continued use of the Services following an Update constitutes acceptance of the modified Services.

2.4. Free Services and Trial Periods If Customer uses Free Services, such use is subject to the following:

(a) Free Services are provided "AS IS" without any warranty, support, or service level commitment;

(b) Smackdab may terminate or modify Free Services at any time without notice, except that routine inactivity actions under Section 3.4 require the notices and protections specified there;

(c) Smackdab may impose or remove usage limits on Free Services at any time;

(d) No refund is due for termination or modification of Free Services;

(e) Any liability arising from Free Services is limited to $100.00 USD;

(f) Smackdab may terminate Customer's account or access to Free Services if Smackdab determines, in its sole discretion, that Customer's use violates this Agreement or poses a risk to Smackdab's systems or other customers.

2.5. Beta Services If Customer participates in a Beta Program or uses Beta Services, such use is governed by the Beta/Early Access Terms located at https://smackdab.ai/legal/beta-early-access-terms, which are incorporated herein by reference.

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3. AUTHORIZATION AND ACCOUNT MANAGEMENT

Summary: This section describes Customer's responsibilities in managing user accounts, maintaining account security, and providing accurate account information.

3.1. Account Creation and Responsibility Customer is responsible for creating and maintaining its account and ensuring all information provided is accurate, complete, and up-to-date. Customer shall ensure that access to the account is restricted to Authorized Users and shall implement reasonable security measures to prevent unauthorized access.

3.2. Authorized Users Customer is responsible for all actions taken by Authorized Users, including all use of the Services and any violations of this Agreement or Applicable Law. Customer shall ensure that Authorized Users comply with this Agreement and all applicable policies. Customer must promptly notify Smackdab of any Authorized User who should no longer have access to the Services.

3.3. Account Security Customer shall maintain strict control over all user credentials and passwords and shall promptly notify Smackdab of any unauthorized access to or use of Customer's account. Customer shall not share user credentials with non-Authorized Users and shall implement password management practices consistent with industry standards.

3.4. Inactive Free Accounts and Connected Integrations

(a) Scope and activity. This Section applies to customer accounts on the ongoing free tier. It does not apply to paid accounts, including users covered by a paid account, and does not replace separate trial-expiration, Beta, payment-default, security, or acceptable-use rules. “Account” means the applicable Customer account, not an individual user's identity across accounts. “Qualifying Activity” means successful interactive sign-in or authenticated human use of the Service, including use through an existing session. Automated sync, token refresh, background polling, scheduled processing, and email opens do not count. Account-level activity must be attributable to that account; merely signing in elsewhere does not keep every account active.

(b) Individual integration inactivity. After three consecutive calendar months without Qualifying Activity by an Authorized User, Smackdab may disconnect that user's connected email, calendar, or other integrations associated with an eligible free account. We will first give that user at least seven full days' notice under Section 15.1. That user's return before disconnection cancels their pending inactivity disconnection; another user's activity does not. Disconnecting an integration stops future syncing and related processing, but does not itself terminate the Customer account or trigger deletion of its stored Customer Data. Reconnecting may require renewed authorization from the connection owner. This does not remove the user's federated sign-in identity.

(c) Account inactivity. After six consecutive calendar months without Qualifying Activity in an eligible free account by any Authorized User, Smackdab may deactivate that account under Section 9.7. Activity in that account by any owner or member before deactivation cancels pending inactivity deactivation and restarts the account inactivity period. Activity in one account does not keep a different account active. Deactivation of one account does not itself delete an individual's identity or terminate their access to other accounts.

(d) Account reminders. We will give the primary account contact an initial notice at least 30 days before scheduled deactivation and reminders daily on days seven, six, five, four, three, two, and one before that date: eight scheduled warnings per recipient. Owners, administrators, and members will also receive copies at their account email addresses, with duplicate recipients removed. At least seven full days must remain after the seven-day notice is given under Section 15.1. Notices identify the affected account, deadline, means of keeping it active, and post-termination export rights. Failed required notice delivery extends the deadline rather than shortening the notice period. Returning activity or an upgrade to paid coverage cancels remaining inactivity reminders and actions for the affected subject.

(e) Safeguards. We check current activity and paid coverage before acting. When activity history, paid eligibility, required notice receipt, or safe separation of shared integrations cannot be established, the affected inactivity action is deferred. We will not revoke a shared credential or delete shared data in a way that removes another protected account's access. A connection used by other users may require administrator assistance or separately authorized reconnection before disconnection. A paid account moving to the ongoing free tier receives a new inactivity period beginning no earlier than the end of paid coverage; any later Qualifying Activity restarts the relevant period. Required legal retention and applicable contractual protections continue to apply.

(f) Introduction of this policy. For existing customers, this Section will not be enforced before the effective date identified in a material-change notice given at least 30 days in advance under Section 15.16 and before it applies under the Agreement's applicable amendment or acceptance requirements. Posting this revision alone does not establish that an inactive customer has accepted it. Each affected user or account also receives the full inactivity notice periods above. Unknown historical activity will not be treated as proof of inactivity.

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4. FEES, PAYMENT, AND BILLING

Summary: This section specifies the fees charged for the Services, payment terms, billing procedures, late payment consequences, and refund policies.

4.1. Subscription Fees Customer shall pay Smackdab the Fees specified in the applicable Order Form in accordance with the payment terms set forth therein. Fees are exclusive of all Taxes, which Customer shall pay in addition to Fees, except where Customer provides valid tax exemption documentation. All Fees are non-cancellable and non-refundable, except as expressly provided in this Agreement or as required by applicable law.

4.2. Payment Terms and Invoicing Unless otherwise specified in an Order Form, Fees are payable according to the terms specified in the Billing Policies located at https://smackdab.ai/legal/billing-policies, which are incorporated herein by reference. Invoices will be issued via email to the billing contact designated in the Order Form.

4.3. Late Payments and Suspension If Customer does not pay Fees when due, Smackdab may, at its sole discretion and without limiting any other rights or remedies:

(a) Charge late fees as specified in the Billing Policies;

(b) Suspend Customer's access to the Services until all outstanding Fees are paid;

(c) Terminate this Agreement and any affected Order Forms in accordance with Section 9.2;

(d) Pursue collection of outstanding Fees and associated costs, including reasonable attorney fees. If Customer's account is suspended for non-payment, Smackdab will notify Customer and provide an opportunity to cure the default. If Customer cures the non-payment within thirty (30) days, Smackdab shall restore access to the Services.

4.4. No Refunds for Suspension or Termination If Smackdab suspends or terminates this Agreement or an Order Form due to Customer's non-payment, Customer shall not be entitled to any refund of prepaid Fees.

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5. PROFESSIONAL SERVICES

Summary: This section describes the terms applicable to Professional Services, including scope, performance standards, deliverable ownership, and expiration of unused hours or deliverables.

5.1. Scope If Customer purchases Professional Services, such services, any Deliverables, and applicable fees will be detailed in an applicable Order Form or Statement of Work (SOW), which will be governed by this TOS and any specific terms in such Order Form/SOW.

5.2. Performance Smackdab will perform Professional Services in a professional and workmanlike manner consistent with industry standards.

5.3. Customer Cooperation Customer will provide reasonable cooperation, timely access to necessary information, personnel, and resources for Smackdab to perform Professional Services. Delays caused by Customer may result in changes to project timelines and fees.

5.4. Ownership and License of Deliverables

(a) Smackdab IP and Background IP Smackdab retains all right, title, and interest in and to all Smackdab Intellectual Property Rights and Background Intellectual Property Rights. Nothing herein grants Customer any rights to Smackdab IP or Background IP except the limited licenses expressly set forth.

(b) Deliverables Unless explicitly agreed otherwise in a signed SOW, Smackdab shall own all right, title, and interest, including all Intellectual Property Rights, in and to any Deliverables. Upon Customer's full payment for the applicable Professional Services, Smackdab grants Customer a non-exclusive, non-transferable (except as permitted in Section 15.4), non-sub-licensable, worldwide, royalty-free license to use such Deliverables internally in connection with its authorized use of the Services during the applicable Subscription Term.

(c) Customer Materials Customer grants Smackdab a limited, non-exclusive license to use any materials provided by Customer to Smackdab solely for the purpose of performing the Professional Services. Customer retains ownership of its Customer Materials.

5.5. Delivery and Expiration All Professional Services are performed remotely, unless otherwise agreed in an Order Form or SOW. If Professional Services include a specific number of hours, those hours will expire as indicated in the applicable Order Form or SOW, or if not indicated, one hundred and eighty (180) days from purchase. If deliverables are included, it is estimated they will be completed within the delivery period specified; if not specified, within one hundred and eighty (180) days from purchase. If Professional Services are not completed within the delivery period due to Customer's failure to provide necessary resources or perform its obligations, such Professional Services will be deemed complete. Fees for Professional Services are non-cancellable and non-refundable, except as expressly provided in an applicable Statement of Work or Order Form, or in the event of Smackdab's uncured material breach of this Agreement.

6. INTELLECTUAL PROPERTY RIGHTS

Summary: This section clarifies ownership of intellectual property. Smackdab owns its platform, software, and related IP. Customer owns their Customer Data and may own certain Deliverables as specified in SOWs. Customer grants Smackdab rights to use Feedback for any purpose.

6.1. Smackdab Intellectual Property Rights As between Smackdab and Customer, Smackdab owns all Intellectual Property Rights in and to the Services, Platform, Documentation, APIs, Software, and all updates, enhancements, and modifications thereto. Customer acquires no rights to such Intellectual Property Rights except the limited license expressly granted herein. All rights not expressly granted are reserved to Smackdab.

6.2. Background Intellectual Property "Background IP" means all Intellectual Property Rights, methodologies, know-how, data, algorithms, processes, and materials used by Smackdab in performing Professional Services that were developed or existing before, or independently of, the commencement of the Professional Services or that are unrelated to Customer's specific requirements. Smackdab retains all rights to Background IP.

6.3. Customer Data Ownership Customer retains all right, title, and interest in and to all Customer Data. Smackdab's use of Customer Data is limited to providing the Services as authorized by this Agreement. Usage Data is Smackdab's property and will be anonymized or aggregated so it does not identify Customer or any individual.

6.4. Feedback Customer grants Smackdab a perpetual, irrevocable, worldwide, royalty-free, fully paid-up, non-exclusive, sublicensable, transferable license to use, incorporate, and exploit any Feedback for any purpose without obligation or compensation. Feedback is not Customer Confidential Information.

6.5. AI-Generated Output

(a) Customer Data remains Customer's property.

(b) To the extent AI Features generate new output or insights primarily and uniquely derived from Customer's specific Customer Data and intended for that Customer's direct use ("AI Output"), Customer shall own such AI Output. Customer's ownership of such AI Output is subject to Smackdab's underlying rights in the AI Features, algorithms, and Smackdab Intellectual Property Rights used to generate it. (c)*Smackdab retains all rights to its AI models, algorithms, and the Smackdab IP. Use of AI Output is subject to the disclaimers in Section 8.8(c).

6.6. Reservation of Rights Each party reserves all rights not expressly granted herein. No license is granted by implication or estoppel.

7. CONFIDENTIALITY

Summary: This section defines "Confidential Information" (which includes Customer Data as Customer's Confidential Information) and outlines each party's obligations to protect the other's confidential information. It specifies the standard of care, restrictions on use and disclosure, exceptions for legally compelled disclosure, and procedures for returning or destroying confidential information upon termination.

7.1. Definition of Confidential Information "Confidential Information" means all information disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party") in connection with this Agreement that is marked as confidential, identified as confidential, or would reasonably be understood to be confidential given its nature and the circumstances of disclosure. Confidential Information includes, without limitation, trade secrets, business plans, financial information, customer lists, technical data, source code, specifications, pricing information, Smackdab's roadmap, and security information. Customer Data is explicitly Customer's Confidential Information.

7.2. Obligation of Confidentiality The Receiving Party agrees to:

(a) Protect the Disclosing Party's Confidential Information with at least a reasonable degree of care (no less than it uses for its own similar information, and in any event, no less than reasonable care, consistent with industry standards for information of like sensitivity);

(b) Not use Confidential Information for any purpose outside the scope of this Agreement;

(c) Limit access to its and its Affiliates' personnel and contractors who have a "need to know" for purposes of this Agreement and who are bound by written confidentiality obligations no less protective than those herein. The Receiving Party is responsible for any breaches of this Section by such personnel or contractors.

7.3. Compelled Disclosure The Receiving Party may disclose Confidential Information if compelled by Applicable Law or valid court order, provided it gives prior notice (if legally permissible and practicable) to the Disclosing Party to allow the Disclosing Party an opportunity to contest the disclosure, and discloses only the minimum information required.

7.4. Return or Destruction Upon termination or expiration of this Agreement or upon the Disclosing Party's request, the Receiving Party shall return or, at Receiving Party's election, securely destroy all Confidential Information (except for one archival copy for legal compliance purposes and except for Customer Data, which is separately addressed in Section 9).

7.5. Duration Confidentiality obligations hereunder shall survive for five (5) years after termination or expiration of this Agreement, except as follows: **(a) Trade Secrets:** Obligations with respect to trade secrets shall survive for so long as such information remains a trade secret under Applicable Law, regardless of whether such trade secrets are also Confidential Information. **(b) Personal Data:** Notwithstanding the five (5) year survival period above, to the extent Customer Data or other Confidential Information contains **Personal Data** as defined in the Data Processing Addendum (DPA), the retention, deletion, and processing of that Personal Data following termination shall be **governed solely by the DPA (Section 9: Deletion or Return of Personal Data)**, and not by this Section 7.5 or any other provision of this Agreement.

The DPA specifies that Personal Data shall be deleted from production systems within thirty (30) days after the Data Retrieval Period, from backup systems within ninety (90) days after production deletion, with a total maximum retention period of one hundred eighty (180) days from the end of the Data Retrieval Period.

Upon deletion of Personal Data pursuant to the DPA timeline, Smackdab's confidentiality obligations with respect to that deleted Personal Data shall terminate. For all other Confidential Information that does not contain Personal Data, the five (5) year survival period continues to apply.

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8. DATA PRIVACY AND SECURITY

Summary: This section describes how Smackdab handles Personal Data in compliance with data protection laws and outlines the security measures Smackdab has implemented. It references the DPA for detailed data protection terms and includes provisions regarding data breach notification, encryption, and vendor management.

8.1. Data Protection Compliance To the extent Smackdab processes Personal Data on behalf of Customer as a "processor," "data processor," or "service provider" under Applicable Data Protection Laws, the Data Processing Addendum (DPA) located at https://smackdab.ai/legal/data-processing-addendum is incorporated herein by reference and governs such processing. For HIPAA-regulated PHI, the Business Associate Agreement (BAA) shall govern.

8.2. Security Measures Smackdab maintains a comprehensive information security program and has implemented administrative, technical, and physical safeguards designed to protect the security, confidentiality, integrity, and availability of the Services and Customer Data against unauthorized access, disclosure, alteration, and destruction. The specific security measures are detailed in the Security Policy located at https://smackdab.ai/legal/security-policy, which is incorporated herein by reference.

8.3. Data Encryption Smackdab uses industry-standard encryption for data in transit and at rest, as described in the Security Policy.

8.4. Access Controls Smackdab maintains role-based access controls, authentication mechanisms, and periodic access reviews to ensure that only authorized personnel have access to Customer Data on a need-to-know basis.

8.5. Vendor Management and Subprocessors Smackdab manages third-party vendors and subprocessors through written agreements that impose data protection and security obligations no less stringent than those contained herein. For Personal Data processing, Customer may review Smackdab's current list of subprocessors at https://smackdab.ai/legal/sub-processors. The DPA also provides additional details on subprocessor management and change notification procedures.

8.6. Data Breach Notification If Smackdab discovers or suspects an unauthorized access, use, or disclosure of Customer Data or a security breach affecting the Services, Smackdab shall notify Customer as follows:

(a) For Personal Data breaches, notification shall be provided in accordance with the DPA and applicable Data Protection Laws;

(b) For other Customer Data breaches, Smackdab shall notify Customer promptly and shall provide reasonable information about the nature of the breach, the data affected, and steps being taken to remediate;

(c) Smackdab shall cooperate with Customer in any required notifications to authorities or affected individuals.

8.7. Customer Cooperation Customer shall:

(a) Notify Smackdab promptly of any suspected unauthorized access or security incidents affecting Customer's account or use of the Services;

(b) Maintain up-to-date contact information for security notifications;

(c) Implement reasonable security practices for managing user credentials and access;

(d) Comply with all Applicable Law regarding data protection and security;

(e) Ensure that all Customer Data submitted to the Services complies with Applicable Law and does not violate third-party rights.

8.8. AI Features and Customer Data

(a) If Customer uses AI Features, Customer Data may be processed by Smackdab's AI models and algorithms to generate outputs or insights for Customer's use within the Services.

(b) Smackdab may use aggregated or anonymized data derived from all customers' use of AI Features to improve and enhance the AI Features, but such use will not identify Customer or any individual.

(c) AI-Generated Output is provided "AS IS" without any warranty that such output is accurate, complete, or fit for any particular purpose. Customer assumes all risk of reliance on AI Output and shall not use AI Output in any manner that could result in harm to any individual or entity. Smackdab shall have no liability for errors, omissions, or inaccuracies in AI Output.

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9. TERM AND TERMINATION

Summary: This section specifies the initial term of the Agreement, how it may be renewed, and the circumstances and procedures for termination by either party.

9.1. Initial Term and Renewal This Agreement is effective as of the Effective Date and continues for the Initial Subscription Term as specified in the applicable Order Form. Following the Initial Subscription Term, this Agreement will automatically renew for successive Renewal Subscription Terms of the same duration, unless either party provides written notice of non-renewal to the other at least thirty (30) days prior to the end of the then-current Subscription Term.

9.2. Termination by Smackdab for Breach Smackdab may terminate this Agreement or any Order Form upon written notice if:

(a) Customer breaches any material term of this Agreement (including the AUP or other incorporated policies) and fails to cure such breach within thirty (30) days after receiving written notice specifying the breach (or such longer period as Smackdab may provide in its sole discretion);

(b) Customer breaches Section 2.2 (Usage Restrictions) or Section 7 (Confidentiality), in which case Smackdab may terminate immediately without a cure period;

(c) Customer becomes insolvent, makes an assignment for the benefit of creditors, files a bankruptcy petition, or has a petition in bankruptcy filed against it which is not dismissed within ninety (90) days;

(d) Customer fails to pay Fees when due and does not cure such failure within thirty (30) days of written notice;

(e) Smackdab, in its reasonable discretion, determines that Customer's use of the Services violates Applicable Law or poses a risk to the Services, Smackdab's systems, or other customers.

9.3. Termination by Customer for Convenience Customer may terminate this Agreement or any Order Form for convenience upon thirty (30) days' written notice to Smackdab at the address provided in Section 15.1. Upon such termination, Customer shall pay all Fees accrued through the termination date.

9.4. Termination by Customer for Breach Customer may terminate this Agreement upon written notice if Smackdab materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice specifying the breach.

9.5. Effects of Termination Upon termination or expiration of this Agreement (other than termination by Customer for Smackdab's uncured material breach):

(a) All rights and licenses granted to Customer under this Agreement shall immediately terminate;

(b) Customer shall immediately cease all use of the Services;

(c) Customer shall pay all outstanding Fees and other charges incurred through the termination date, and such payment shall be due within thirty (30) days of invoice; (d) **Data Retrieval and Deletion.** Following termination or expiration, Customer shall have a thirty (30)-day period to retrieve or export its Customer Data from the Services ("Data Retrieval Period").

After the expiration of the Data Retrieval Period, Smackdab will commence deletion of Customer Data as follows:

- Production deletion: within thirty (30) days after the Data Retrieval Period ends - Backup deletion: no later than ninety (90) days after production deletion - Total maximum retention: one hundred eighty (180) days from the end of the Data Retrieval Period **For Beta or preview Services:** Customer Data may be deleted **at any time without notice**, and the Data Retrieval Period and deletion timeline above **do not apply**.

Customers using Beta Services are solely responsible for backing up and exporting any data they wish to retain before the Beta Period ends or before Smackdab discontinues the Beta Services.

See Beta/Early Access Terms for complete details.

(e) Smackdab may (but is not obligated to) delete Customer Data or Personal Data earlier if Customer requests or if required by Applicable Law;

(f) All Confidential Information of Smackdab shall be returned or destroyed per Section 7.4;

(g) Sections that by their nature should survive termination shall survive, including Sections 1, 6, 7, 8 (with respect to retained data), 10, 11, 12, 13, 14, 15, and this Section 9.5.

9.6. Refund Policy Upon Termination Except as expressly provided in Section 15.16(b) regarding material adverse changes, all Fees are non-refundable. If Customer terminates this Agreement due to Smackdab's uncured material breach and provides written notice within thirty (30) days of such breach, Customer may be entitled to a pro-rata refund of prepaid, unused Fees for the remainder of the then-current Subscription Term, provided written notice specifying the material breach is provided within thirty (30) days of discovery.

9.7. Deactivation for Free-Account Inactivity. Smackdab may terminate access to an eligible free Customer account for inactivity only under Section 3.4. Deactivation ends ordinary account use and remaining integration processing, but preserves a secure means for the Customer or its authorized representative to retrieve or export Customer Data for the full 30-day Data Retrieval Period under Section 9.5(d). An export request does not require restoration of ordinary service. Deactivation is not immediate permanent erasure. Production and backup deletion follow Section 9.5(d) and DPA Section 9, including their retention exceptions. No separate right to full account restoration is promised by this Section.

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10. WARRANTIES AND DISCLAIMERS

Summary: This section specifies the warranties Smackdab makes regarding the Services and contains disclaimers of other warranties not expressly stated here. It addresses the "AS IS" nature of the Services and specifies limitations on implied warranties.

10.1. Limited Warranty Smackdab warrants that the Services will substantially conform to the Documentation in all material respects and will be provided in a professional and workmanlike manner consistent with industry standards, provided that Customer uses the Services in accordance with this Agreement and the Documentation.

10.2. Warranty Exclusions Smackdab does not warrant that:

(a) The Services will be error-free, uninterrupted, or available at all times;

(b) Defects in the Services will be corrected;

(c) The Services will meet Customer's specific requirements;

(d) Third-Party Applications, including any integrations or plugins, will function properly with the Services;

(e) Any outputs, insights, or reports generated by AI Features are accurate or fit for any particular purpose.

10.3. Disclaimer of Warranties EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1, SMACKDAB DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE." SMACKDAB DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED.

10.4. Third-Party Products SMACKDAB AND ITS AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY APPLICATIONS THAT CUSTOMER USES IN CONNECTION WITH THE SERVICES. SMACKDAB'S LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

10.5. Customer Data Responsibility Customer is solely responsible for the accuracy, quality, and legality of all Customer Data. Smackdab is not responsible for loss, corruption, or unauthorized access to Customer Data.

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11. LIABILITY

Summary: This section addresses the limitation of liability for both parties and specifies certain carve-outs where liability limitations do not apply.

11.1. Limitation of Consequential Damages EXCEPT FOR BREACHES OF SECTION 7 (CONFIDENTIALITY), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, BREACHES OF DATA PROTECTION OBLIGATIONS, AND EXCEPT AS PROHIBITED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR COST OF COVER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2. Limitation of Direct Damages EXCEPT FOR BREACHES OF SECTION 7 (CONFIDENTIALITY), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, BREACHES OF DATA PROTECTION OBLIGATIONS, AND EXCEPT AS PROHIBITED BY APPLICABLE LAW, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED:

(a) For Paid Services: The total amount of Fees paid by Customer to Smackdab during the twelve (12) months immediately preceding the event giving rise to liability;

(b) For Free Services, Trial Services, or Beta Services: One Hundred Dollars (USD $100.00).

11.3. Exceptions to Liability Cap The limitations set forth in Sections 11.1 and 11.2 shall **not apply** to the following categories of claims:

(a) Indemnification obligations under Section 12 (Indemnification) for third-party intellectual property infringement;

(b) Death or personal injury caused by negligence or willful misconduct;

(c) Fraud or willful misconduct;

(d) Claims for which liability cannot be limited under Applicable Law;

(e) Breaches of the Data Processing Addendum (DPA) or Business Associate Agreement (BAA), which may be subject to different provisions in the DPA or BAA as applicable. All other claims, including breach of confidentiality under Section 7 and breach of intellectual property rights generally, shall remain subject to the liability cap as set forth in Section 11.2. Liability for breaches of the DPA or BAA, including for regulatory fines or data subject damages directly attributable to Smackdab's breach, may be subject to different liability provisions if specified therein, and such DPA or BAA provisions shall prevail for such specific data protection matters.

11.4. Third-Party Products SMACKDAB AND ITS AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY APPLICATIONS THAT CUSTOMER USES IN CONNECTION WITH THE SERVICES. SMACKDAB'S LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

11.5. Agreement to Liability Limit CUSTOMER UNDERSTANDS AND AGREES THAT ABSENT CUSTOMER'S AGREEMENT TO THIS LIMITATION OF LIABILITY, SMACKDAB WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO CUSTOMER. THE PARTIES AGREE THESE LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN AND REFLECT A REASONABLE ALLOCATION OF RISK.

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12. INDEMNIFICATION

Summary: This section describes how each party will protect the other from certain third-party lawsuits. Smackdab will generally defend the Customer if the Service itself infringes third-party intellectual property rights. The Customer will defend Smackdab against claims arising from Customer Data or the Customer's misuse of the Service. It outlines the procedures for handling such claims and specific exclusions.

12.1. Indemnification by Smackdab Smackdab will defend Customer, its Affiliates, officers, directors, and employees ("Customer Indemnified Parties") against any third-party Claim alleging the authorized use of the Services as provided by Smackdab (excluding Third-Party Applications, Customer Data, and any modifications or combinations made by Customer) infringes a valid U.S. patent, copyright, or trademark, or misappropriates a trade secret of such third party ("IP Claim").

Smackdab will indemnify Customer Indemnified Parties for any damages, reasonable attorney fees, and costs finally awarded against them as a result of, or for amounts paid by them under a settlement approved in writing by Smackdab of, an IP Claim.

This obligation is conditioned upon: (a) the Customer Indemnified Party promptly giving Smackdab written notice of the IP Claim (failure to provide prompt notice shall only relieve Smackdab of its obligations to the extent it is materially prejudiced thereby);

(b) Smackdab having sole control of the defense and settlement of the IP Claim (provided Smackdab may not settle any IP Claim unless the settlement unconditionally releases the Customer Indemnified Party of all liability and does not require any admission of fault or payment by the Customer Indemnified Party without its prior written consent, not to be unreasonably withheld); and (c) the Customer Indemnified Party providing Smackdab with all reasonable assistance, at Smackdab's expense.

12.2. Exclusions and Mitigation Smackdab will have no liability or obligation under Section 12.1 if the IP Claim arises from:

(a) Use of the Services not in accordance with this Agreement or Documentation;

(b) Any modification of the Services by anyone other than Smackdab or its authorized contractors;

(c) The combination, operation, or use of the Services with any hardware, software, data, or materials not supplied by Smackdab or specified in the Documentation, if the alleged infringement relates to such combination;

(d) Customer Data or Third-Party Applications;

(e) Smackdab's compliance with designs, specifications, or instructions provided by Customer;

(f) Use of a superseded or altered release of the Services if infringement would have been avoided by use of a current, unaltered release made available to Customer;

(g) Beta Services or Free Services.

If the Services become, or in Smackdab's opinion are likely to become, the subject of an IP Claim, Smackdab may, at its option and expense:

(i) procure for Customer the right to continue using the Services;

(ii) replace or modify the Services to be non-infringing, provided such modification or replacement provides substantially equivalent features; or

(iii) if options

(i) and

(ii) are not commercially reasonable, terminate the applicable Order Form and refund Customer any prepaid, unused Fees for the infringing Services.

12.3. Sole Remedy THIS SECTION

12.1 AND

12.2 STATE SMACKDAB'S ENTIRE LIABILITY AND THE CUSTOMER INDEMNIFIED PARTIES' SOLE AND EXCLUSIVE REMEDY FOR IP CLAIMS.

12.4. Indemnification by Customer Customer will defend Smackdab, its Affiliates, officers, directors, and employees ("Smackdab Indemnified Parties") against any third-party Claim arising from or related to:

(i) Customer Data, including any Claim that Customer Data infringes third-party rights or violates Applicable Law;

(ii) Customer's or its Authorized Users' use of the Services in breach of this Agreement, the AUP, or Applicable Law (including but not limited to TCPA, CAN-SPAM, Data Protection Laws);

(iii) Any of the circumstances described as Excluded Claims in Section 12.2 if attributable to Customer;

(iv) Customer's breach of its obligations under Section 7 (Confidentiality) or Section 8 (Data Privacy and Security) not directly covered by Smackdab's own security obligations;

(v) Customer's violation of third-party intellectual property rights through use of the Services in a manner not authorized by this Agreement, including but not limited to uploading, transmitting, or distributing

infringing content through the Services;

(vi) Customer's failure to comply with Applicable Laws in its use of the Services, including but not limited to export control laws, anti-spam laws (CAN-SPAM, CASL), telemarketing laws (TCPA), consumer protection laws, or data protection regulations;

(vii) Customer's failure to obtain necessary consents, permissions, or authorizations from end users, data subjects, or third parties required for Customer's use of the Services, including but not limited to consent for data processing, marketing communications, or voice/messaging services;

(viii) Any claims arising from Customer's products, services, or business operations that are independent of the Services themselves, including product liability, professional malpractice, or breach of Customer's obligations to its own customers.

Customer will indemnify Smackdab Indemnified Parties for any damages, reasonable attorney fees, and costs finally awarded against them as a result of, or for amounts paid by them under a settlement approved in writing by Customer of, such a Claim.

This obligation is conditioned upon: (a) the Smackdab Indemnified Party promptly giving Customer written notice of the Claim (failure to provide prompt notice shall only relieve Customer of its obligations to the extent it is materially prejudiced thereby);

(b) Customer having sole control of the defense and settlement of the Claim (provided Customer may not settle any Claim unless the settlement unconditionally releases the Smackdab Indemnified Party of all liability and does not require any admission of fault or payment by the Smackdab Indemnified Party without its prior

written consent, not to be unreasonably withheld); and (c) the Smackdab Indemnified Party providing Customer with all reasonable assistance, at Customer's expense.

13. GOVERNING LAW AND JURISDICTION

Summary: This section specifies that the laws of the State of Florida, USA, will govern the agreement, without regard to conflict of law principles. It also establishes that legal disputes not subject to arbitration will be handled exclusively by state and federal courts located in Collier County, Florida.

13.1. Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, USA, without regard to conflicts of laws rules that would require the application of the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) do not apply.

13.2. Venue Subject to Section 14 (Dispute Resolution), state and federal courts in Collier County, Florida, USA, have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Parties consent to this jurisdiction and venue.

14. DISPUTE RESOLUTION AND ARBITRATION

Summary: This section establishes a procedure for informal dispute resolution, binding arbitration as the primary method for resolving disputes (except for certain categories), and a waiver of jury trial and class action rights.

14.1. Informal Dispute Resolution Before initiating arbitration or litigation, the parties agree to attempt to resolve any dispute through good faith negotiation between Customer and Smackdab for a period of thirty (30) days (the "Negotiation Period"). During the Negotiation Period, representatives of each party with authority to settle the dispute shall meet (in person, by phone, or videoconference) and attempt to resolve the dispute in good faith.

14.2. Binding Arbitration EXCEPT AS PROVIDED IN SECTION 14.7, IF THE PARTIES DO NOT RESOLVE A DISPUTE THROUGH NEGOTIATION WITHIN THE NEGOTIATION PERIOD, EACH PARTY AGREES THAT ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING THE FORMATION, INTERPRETATION, BREACH, TERMINATION, ENFORCEMENT, OR VALIDITY THEREOF (A "DISPUTE"), SHALL BE SETTLED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) IN ACCORDANCE WITH THE AAA COMMERCIAL ARBITRATION RULES & MEDIATION PROCEDURES, EXCEPT AS MODIFIED BY THIS SECTION 14. The arbitration shall be conducted in Collier County, Florida, or such other location as the parties mutually agree. The arbitration shall be conducted by a single neutral arbitrator selected in accordance with the AAA Commercial Rules. The arbitrator shall issue a written decision stating the factual and legal basis for the award. The arbitrator's decision will be final and binding. The arbitrator can award monetary damages and any non-monetary remedy available under applicable law, AAA Commercial Rules, and this Agreement, but not for anyone not a party to the arbitration.

14.3. Arbitration Procedures The parties may conduct discovery in arbitration as permitted by the AAA Commercial Rules. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the State of Florida to any Dispute. The arbitrator shall honor claims of privilege recognized at law. The parties may bring a motion to dismiss or motion for judgment on the pleadings to the extent permitted by the AAA Commercial Rules.

14.4. Arbitration Fees Payment of filing, administration, and arbitrator fees will be governed by AAA Commercial Rules. Smackdab will reimburse Customer for those fees for claims totaling less than USD $10,000 unless the arbitrator determines claims are frivolous. Each party bears its own attorneys' fees unless arbitration rules and/or applicable law provide otherwise.

14.5. Waiver of Jury Trial EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

14.6. Class Action Waiver TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION. EACH PARTY WAIVES ANY RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR MEMBER. IF A CLAIM PROCEEDS IN COURT RATHER THAN ARBITRATION, EACH PARTY WAIVES JURY TRIAL AND AGREES TO INDIVIDUAL BASIS ONLY. This class action waiver is a material and essential part of this arbitration agreement and is not severable. If any portion of this class action waiver is found to be illegal or unenforceable, this entire arbitration agreement shall be unenforceable.

14.7. Exceptions to Arbitration Notwithstanding the foregoing, either party may bring a lawsuit in the courts specified in Section 13.2 solely for injunctive or other equitable relief to stop unauthorized use or abuse of the Services, security breaches, or intellectual property infringement or misappropriation without first engaging in informal dispute resolution or arbitration.

If a dispute qualifies, either party may pursue it in a small claims court in Collier County, Florida, on an individual, non-class basis. **14.8. 30-Day Right to Opt Out of Arbitration*⚠ IMPORTANT YOU HAVE THE RIGHT TO OPT OUT OF BINDING ARBITRATION.** If you do not wish to be bound by the arbitration provisions in this Section 14, you must notify Smackdab in writing within thirty (30) days of the Effective Date of this Agreement (the date you first accepted these Terms).

How to Opt Out: - **Email**: Send written notice to legal@smackdab.ai - **Required Information**: Include your full legal name, company name (if applicable), the email address associated with your account, and a clear statement: "I opt out of arbitration" - **Deadline**: Within 30 days of account creation or acceptance of these Terms

- **Late Notices:** Opt-out notices received after 30 days are ineffective **Effect of Opt-Out:** If you opt out, all disputes will be resolved in court pursuant to Section 13 (Governing Law & Jurisdiction).

Smackdab will also not be bound by these arbitration provisions for disputes with you.

All other terms of this Agreement remain in full force and effect.

Your opt-out only applies to arbitration; the class action waiver in Section 14.6 remains enforceable unless prohibited by law.

14.9. Limitation on Time to Initiate Disputes Regardless of any statute or law to the contrary, any Dispute must be filed within one (1) year after such Dispute arises. If a Dispute is not timely filed, it shall be forever barred.

14.10. Confidentiality of Arbitration The arbitration proceedings and award shall be maintained in confidence by the parties, except as necessary to enforce or challenge the award or as required by law.

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15. GENERAL PROVISIONS

15.1. Notices Any notice required or permitted under this Agreement must be in writing and shall be deemed given when: (a) delivered personally; (b) sent by email with confirmation of receipt; (c) sent by registered or certified mail, return receipt requested, to the recipient's mailing address; or (d) sent by reputable overnight courier (FedEx, UPS, etc.) to the recipient's mailing address. Notices to Customer regarding legal matters, account suspension, or termination shall be sent to the primary contact email or address associated with the Customer account. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer or sent to the primary email address associated with the Customer account. Notices to Smackdab shall be addressed to: **Smackdab Inc., Attn: Legal Department, 372 Live Oak Ln, Marco Island, FL 34145, Collier County, USA,** with a copy via email to l**egal@smackdab.ai**. Either party may update its address for notices by providing notice to the other party in accordance with this section.

For Section 3.4, personal integration warnings go to the affected user's verified contact email; account deactivation notices must include the primary account contact, with copies as described in Section 3.4(d). These notices remain subject to the confirmation-of-receipt requirement above. Acceptance by Smackdab's sending provider alone does not satisfy that requirement. If required receipt cannot be established, Smackdab will defer the inactivity action and use another permitted notice method. Copying other members does not replace the required primary-contact notice.

15.2. Publicity and Marketing Customer grants Smackdab a limited, revocable right to use Customer's company name and standard logo as a reference for marketing or promotional purposes on Smackdab's website and in other public or private communications with existing or potential Smackdab customers, subject to Customer's standard trademark usage guidelines as provided to Smackdab. Customer may revoke this right at any time for future use by sending an email to **legal@smackdab.ai**, and Smackdab will use reasonable efforts to cease such use prospectively.

15.3. Relationship of the Parties The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Neither party has any authority to assume or create any obligation on behalf of the other party.

15.4. Assignment Neither party may assign or transfer any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned, or delayed). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that the assignee is not a direct competitor of the other party and agrees in writing to be bound by the terms of this Agreement. Any other purported assignment or delegation in violation of this section shall be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

15.5. No Third-Party Beneficiaries Except as expressly provided in Section 17.2 (Apple-Enabled Software Applications) and for Indemnified Parties' rights under Section 12, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.6. Force Majeure Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by or results from a Force Majeure Event, which includes acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities, terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic (including COVID-19 and its variants and any related governmental actions or public health guidance), strikes or other labor disputes (other than those involving the affected party's own employees), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage, provided that such event is outside the reasonable control of the affected party, was not foreseeable, and the affected party uses diligent efforts to end the failure or delay and minimize its effects.

The party affected by the Force Majeure Event shall give prompt written notice to the other party, stating the period of time the occurrence is expected to continue.

During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

If the Force Majeure Event continues for a continuous period of more than sixty (60) days, either party may terminate any affected Order Forms or this Agreement upon written notice to the other party.

15.7. Entire Agreement and Order of Precedence This Agreement (including all documents explicitly incorporated by reference, such as all applicable Order Forms, the DPA, any BAA, the AUP, PST, Privacy Policy, Security Policy, Cookie Policy, DMCA Policy, API Terms of Use, Beta/Early Access Terms, Billing Policies, and any Marketplace Terms or Community Guidelines if applicable) constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior and contemporaneous agreements, proposals, representations, warranties, or negotiations, whether written or oral. No modification,

amendment, or waiver of any provision hereof shall be effective unless in writing and signed by authorized representatives of both parties, except as otherwise permitted for modifications by Smackdab in Section 15.16.

Master Document Hierarchy: In the event of any conflict or inconsistency among any documents incorporated into this Agreement (including the TOS, Order Forms, DPA, BAA, PST, API Terms, Beta Terms, Billing Policies, Security Policy, Privacy Policy, AUP, and all other policies and addenda), the following order of precedence shall apply **unless a specific document expressly states that it prevails solely for a defined subject matter**.

Where any document contains a subject-matter-specific override (e.g., "this DPA prevails solely for data protection matters"), that override applies only to the specified subject matter; all other matters shall be governed by this hierarchy.

Document Hierarchy (Highest to Lowest Precedence):

1. ┌─ Data Processing Addendum (DPA) │ \[Governs: Personal Data processing only\] │
1. ├─ Business Associate Agreement (BAA) │ \[Governs: PHI/HIPAA matters only\] │
1. ├─ Executed Order Form │ \[Governs: Commercial terms - pricing, quantity, Service tier, Subscription Term\] │
1. ├─ Terms of Service (TOS) ← THIS DOCUMENT │ \[Governs: Core agreement terms and general obligations\] │
1. ├─ Product-Specific Terms (PST) │ \[Governs: Service level commitments, uptime, credits, remedies\] │
1. ├─ Security Policy │ \[Governs: Security practices, controls, incident response\] │
1. ├─ API Terms of Use │ \[Governs: API usage, rate limits, authentication\] │
1. ├─ Beta/Early Access Terms │ \[Governs: Beta Services, experimental features\] │
1. ├─ Billing Policies │ \[Governs: Payment terms, late fees, billing procedures\] │
10. ├─ Payment Processing Agreement │ \[Governs: Payment processing, payment methods, payment terms\] │
11. ├─ Marketplace

Terms / Community Guidelines │ \[Governs: Marketplace transactions, community features\] │

12. ├─ Voice & Messaging Policy │ \[Governs: Voice and messaging service usage, opt-out requirements\] │
13. ├─ Acceptable Use Policy (AUP) │ \[Governs: Prohibited uses, content restrictions\] │
14. ├─ Privacy Policy │ \[Governs: Smackdab's data handling as controller\] │
15. ├─ Cookie Policy │ \[Governs: Cookie usage, tracking technologies\] │
16. ├─ DMCA/Copyright Policy │ \[Governs: Copyright infringement procedures\] │
17. └─ Other Documentation \[Governs: Technical specifications, user guides\]

Key Precedence Rules:

(a) Data Protection Always Prevails: The Data Processing Addendum (DPA) shall always prevail with respect to all matters involving data protection, privacy, personal data processing, security, breach notification, data deletion, and compliance with Applicable Data Protection Laws (GDPR, CCPA, etc.), regardless of any conflicting language in any other document, including Beta

Terms, API Terms, Product-Specific Terms, or any other policy or addendum.

This super-precedence applies to data protection matters exclusively and does not extend to non-data-protection aspects of those other documents.

(b) Specialized Documents Control Their Specific Scope: Specialized documents control solely for their specific subject matter (e.g., DPA controls for data protection only; PST controls for service level commitments only; API Terms control for API use only; Beta Terms control for Beta Services only).

For all other matters not related to data protection, the hierarchy below applies.

(c) Higher Hierarchy Prevails: Higher-numbered documents in the hierarchy below prevail over lower-numbered documents for overlapping provisions not covered by a subject-matter-specific override.

(d) Order Forms Override TOS: Order Forms override TOS for commercial terms (pricing, quantities, service tier, subscription term) negotiated in a specific Order Form, subject to the DPA super-precedence in Section 15.7(a).

(e) TOS is Master Agreement: TOS serves as the master agreement for general terms, dispute resolution, liability, confidentiality, and all matters not covered by specialized documents or the DPA.

(f) Cross-Addendum Conflicts: If two specialized documents conflict on a matter outside both their scopes (e.g., Beta Terms and API Terms on a non-data-protection billing matter), the hierarchy in this Section 15.7 determines precedence.

However, if the conflict involves data protection, the DPA prevails per Section 15.7(a).

(g) Customer POs are Null and Void: Terms or conditions in any Customer purchase order or other standard business form issued by Customer are null and void and of no effect, even if signed or acknowledged by Smackdab.

**

Diagram — How to Apply This Hierarchy:** 1.

FIRST: Does the conflict involve data protection, privacy, or personal data handling?

YES → DPA WINS.

Use DPA exclusively for all data protection aspects. (Other documents control non-data-protection aspects of the same service.)

NO → Continue to Step 2. 2.

Is there a subject-matter-specific override clause (e.g., "API Terms control API use")?

YES → Does the conflict fall entirely within that subject matter AND not involve data protection?

YES → Use the override document.

Stop.

NO → Continue to Step 3.

NO → Continue to Step 3. 3.

Apply the hierarchy in this Section 15.7. Order Forms > TOS > PST > API/Beta/Product Terms > Billing Policies > lower-ranked documents. Example: "What happens to personal data in Beta Services?" → Step 1: YES, this involves data protection. → Result: DPA controls deletion, retention, breach notification. Beta Terms control access limits, testing rules, disclaimers.

15.8. Severability If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. If such modification is not possible, the invalid or unenforceable provision shall be deemed severed from this Agreement, and the remainder of the Agreement shall continue in full force and effect.

15.9. Waiver No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. A waiver on one occasion shall not be construed as a waiver of any right or remedy on any future occasion. All waivers must be in writing and signed by an authorized representative of the waiving party.

15.10. Headings and Interpretation The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. As used herein, the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation." The words "shall," "will," and "agrees" are mandatory, and "may" is permissive. Unless the context otherwise requires, references herein: (a) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (b) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision.

15.11. Anti-Corruption Each party will comply with all applicable anti-corruption laws (e.g., U.S. Foreign Corrupt Practices Act, UK Bribery Act). Customer represents it has not received or been offered any illegal or improper bribe, kickback, payment, or thing of value from Smackdab employees/agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction. Customer will promptly notify Smackdab Legal of any suspected violations.

15.12. Government End Use Services are "commercial computer software" and "commercial computer software documentation" as defined in FAR 2.101 and DFARS 252.227-7014(a)(1) and (a)(5), as applicable. Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in FAR 52.227-19 (Commercial Computer Software – Restricted Rights) and DFARS 252.227-7013(c)(1)(ii) (Rights in Technical Data and Computer Software), as applicable. **Manufacturer**: Smackdab Inc., 372 Live Oak Ln, Marco Island, FL 34145.

15.13. Execution This Agreement may be executed in counterparts, which taken together shall constitute one instrument. An electronically transmitted signature (e.g., via PDF, e-signature platform like DocuSign) shall be deemed an original signature for all purposes.

15.14. Insurance Smackdab will maintain commercially reasonable insurance coverage, which may include Commercial General Liability insurance with limits of no less than $1,000,000 per occurrence and $2,000,000 in the aggregate, Technology Errors & Omissions (Professional Liability) insurance with limits of no less than $1,000,000 per claim and $2,000,000 in the aggregate, and Cyber Liability insurance with limits of no less than $2,000,000 in the aggregate. Upon Customer's reasonable written request (no more than annually), Smackdab will provide a certificate of insurance as evidence of such coverage, subject to confidentiality obligations.

15.15. Accessibility Smackdab endeavors to design and maintain the Services striving for conformance with recognized accessibility standards, such as the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, where feasible and appropriate for the Services offered. Smackdab will make available a Voluntary Product Accessibility Template (VPAT) or similar conformance statement upon request. Customer acknowledges that achieving and maintaining accessibility is an ongoing process and that not all aspects of the Services may be fully accessible at all times. Information about accessibility features can be found in the Documentation or by contacting Smackdab.

15.16. Modifications to Agreement or Service

(a) To Agreement: Smackdab may modify this Agreement by posting a revised version on its website https://smackdab.ai/legal/terms-of-service or otherwise notifying Customer (e.g., via email to the primary account contact or through the Service interface).

For material changes, Smackdab will provide at least thirty (30) days' advance notice before such changes become effective, unless shorter notice is required by Applicable Law or for urgent security reasons.

Customer's continued use of the Services after the effective date of any such changes constitutes acceptance of the modified Agreement.

If Customer does not agree to the material changes, Customer's sole and exclusive remedy is to terminate its account and cease using the Services prior to the effective date of the changes.

(b) Refund Due to Material Adverse Change: If Customer terminates due to a material adverse change made by Smackdab to this TOS (and not due to changes required by law or to address security risks), Customer may be entitled to a pro-rata refund of prepaid, unused Fees for the remainder of the then-current Subscription Term, provided such termination occurs within thirty (30) days of the material change taking effect and Customer provides written notice detailing the material adverse effect.

(c) To Services: Smackdab may make changes, modifications, or updates to the Services, Documentation, features, or functionality at any time in its sole discretion without notice to Customer.

Smackdab shall not be liable for any effects such modifications may have on Customer's use or data.

Updates may modify the Services' appearance, functionality, or user experience.

15.17.

Centralized Notice Requirements The following table summarizes key notification obligations under this Agreement.

For complete details, refer to the specific sections referenced.

| Notification Type | When Required | Timeline | Recipient | Reference Section | Recipient Email |

|---|---|---|---|---|---|

| Billing Dispute Notice | When disputing an invoice or charge | Within 30 days of charge | Smackdab Billing Team | Sect

| Late Payment Notice | When account payment is overdue | Upon delinquency | Billing contact on file | Section 4.3, Bill

| Data Breach/Security Incident | Upon confirmed breach affecting Personal Data | Within 48 hours of becoming aware | Cu

| Account Unauthorized Access | When Customer becomes aware of unauthorized use | Promptly upon discovery | Smackdab Sec

| Material TOS Change | When Agreement

is materially modified | 30 days advance notice | Primary account contact | Section 15.16(a) | legal@smackdab.ai |

| Termination for Cause | For material breach or other grounds | 30 days notice (unless immediate) | Other party | Secti

| Termination for Convenience | To end Agreement without cause | 30 days notice | Other party | Section 9.3 | legal@smac

| Dispute Escalation | Before initiating arbitration | 30 days good faith negotiation | Other party representatives | Se

| Arbitration Opt-Out | To decline binding arbitration | Within 30 days of Effective Date | Smackdab Legal | Section 14.

| Trademark/Logo Use Revocation | To revoke marketing reference rights | Any time for future use | Legal Team | Section

Note: This table provides a high-level reference.

All notification requirements are governed by their respective sections in this Agreement and any incorporated policies.

In the event of any conflict between this table and the specific section requirements, the requirements in the specific section shall control.

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16. PRODUCT-SPECIFIC TERMS AND SERVICE LEVEL COMMITMENTS

The Product-Specific Terms (PST) referenced throughout this Agreement contain additional terms, conditions, and service level commitments specific to various Smackdab products and services. For specific products or features, the PST shall provide supplemental or clarifying terms. In the event of any conflict between the TOS and the PST regarding service level commitments and remedies, the PST shall control for those specific matters.

16.1. Service Availability Commitments Smackdab commits to maintaining service availability (uptime) for Paid Services as specified in the applicable Order Form or PST documentation for Customer's service tier. Uptime commitments exclude Scheduled Maintenance (with advance notice as defined in the PST) and Excusable Downtime (as defined in Section 1.27). The PST details how Uptime is calculated and what constitutes "core functionalities." Monthly Uptime Percentage, Excluded Downtime, and Service Credits are stated only in the Product-Specific Terms at https://smackdab.ai/legal/product-specific-terms. Free and Trial Services have no uptime commitment.

16.2. Service Credits and Remedies If Smackdab fails to meet the Uptime commitments specified in the PST for Customer's service tier, Customer may be eligible for Service Credits as Customer's sole and exclusive remedy for availability shortfalls. For complete details on Service Credits, including:

- Credit calculation methodology and percentages - Maximum credit caps - Eligibility requirements - Claim process and timeline - Exclusions and limitations Please refer to the Product-Specific Terms (PST) Section 4 (Service Credits) available at https://smackdab.ai/legal/product-specific-terms Service Credits are applied as credits toward future invoices and do not extend the Subscription Term.

16.3. Data Resiliency Smackdab maintains backup and disaster recovery procedures as detailed in the Security Policy and PST, including:

- Regular automated backups of Customer Data - Recovery Point Objective (RPO) and Recovery Time Objective (RTO) targets as specified in the PST - Geographic redundancy for Enterprise tier services (where applicable)

16.4. Support Services Support service levels vary by service tier and are detailed in the PST:

- Commercial Services: Business hours support (9 AM - 5 PM ET, Monday-Friday) - Enterprise Services: Priority support with faster response times (as specified in Order Form) - Free/Trial Services: Community support only (no SLA)

16.5. PST Document Location The complete Product-Specific Terms document is available at: https://smackdab.ai/legal/product-specific-terms Customers should review the PST for detailed metrics, measurement methodologies, calculation of Uptime, definitions of Downtime and Excusable Downtime, complete claim processes, and detailed exclusions.

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17. MOBILE SERVICES AND APPLE-ENABLED SOFTWARE

17.1. Mobile Services Carrier charges may apply to the use of mobile services; not all mobile services work with all carriers or devices.

17.2. Apple-Enabled Software Where applicable:

(a) This Agreement is between you and Smackdab (not Apple);

(b) Apple has no warranty, support, or other obligations to you related to the Services;

(c) Apple and its subsidiaries are third-party beneficiaries of this Section 17.2 and have the right to enforce it;

(d) You must comply with Apple's App Store Terms of Service and any other applicable Apple terms. Additional standard Apple provisions apply regarding warranty disclaimers, warranty claims, export laws, and beneficiary status, as set forth in Apple's standard terms for third-party applications.

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18. CONTACT INFORMATION AND SUPPORT

18.1. Legal Notice Email:legal@smackdab.ai

18.2. Support Email: support@smackdab.ai **Support Portal:** https://smackdab.ai/support

18.3. Privacy Matters Email: privacy@smackdab.ai

18.4. Billing Inquiries Email: billing@smackdab.ai **Billing Portal:** https://auth.smackdab.ai/billing

18.5. Mailing Address Smackdab Inc. 372 Live Oak Ln Marco Island, FL 34145 United States --- **DOCUMENT VERSION AND CHANGELOG** | Version | Date | Changes |

|---|---|---|

| 7.8 | September 9, 2026 | Added separate individual integration and account inactivity rules, notice safeguards, paid

| 7.6 | November 1, 2025 | Enterprise-ready improvements: (1) Raised liability cap for paid services to 12-month fees (r

| 7.5 | November 1, 2025 | Final compliance fixes: Added definitions for "Commercially Reasonable Efforts", "Material Ch

| 7.4 | November 1,

2025 | Attorney-approved consolidated TOS; standardized 30/90/180 deletion timeline; PST terminology standardized; arbitration clarifications; general corrections and harmonization. |

| 7.3 | July 3, 2025 | Original

This PDF is the formal downloadable version of TERMS OF SERVICE.