

## SIMPLR TERMS OF SERVICE

**This Terms of Service Agreement** (this “**Agreement**”) is by and between you (“you” or “your”) and **SIMPLR SOLUTIONS, INC.**, a Delaware Corporation with its principal place of business located at 450 Townsend Street, Suite 204, San Francisco, CA 94107 (“**SIMPLR**”) and governs your ability to offer technical and operational support to your customers through “SIMPLR Services” (as defined below). Individually each of you and SIMPLR is a “Party” and together are collectively referred to as the “Parties.” This Agreement becomes effective when you click on the “I Accept” button (the “Effective Date”).

**PLEASE READ THIS AGREEMENT CAREFULLY AND COMPLETELY BEFORE CLICKING “I ACCEPT”. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU AND SIMPLR AND GOVERNS YOUR USE OF THE SIMPLR SERVICES. THIS AGREEMENT LIMITS THE LIABILITY OF SIMPLR TO YOU AND REQUIRES YOU TO RESOLVE ANY DISPUTES WITH SIMPLR THROUGH BINDING AND INDIVIDUAL ARBITRATION OR SMALL CLAIMS COURT ACTIONS, RATHER THAN THROUGH JURY TRIALS OR CLASS ACTIONS. IF YOU DO NOT AGREE WITH THE TERMS, DO NOT CLICK “I ACCEPT” AND DO NOT USE THIS WEB PORTAL (AS DEFINED BELOW) IN ANY MANNER. PLEASE CONTACT SIMPLR AT [HELLO@SIMPLR.AI](mailto:HELLO@SIMPLR.AI) WITH QUESTIONS REGARDING THIS AGREEMENT.**

SIMPLR may revise this Agreement at any time without notice by updating this posting. By using this Web Portal after such posted changes, you agree to be bound by any such revisions and should therefore periodically visit the website and page to determine the then current terms and conditions of use to which you are bound.

The current version of this Agreement is January, 2018. The materials provided by SIMPLR through the Web Portal are protected by law, including, but not limited to, United States copyright law. All rights to materials included within this Web Portal are reserved.

Please read the SIMPLR Privacy Policy <https://cdn2.hubspot.net/hubfs/3974729/Documents/privacyPolicyv3.pdf>, which is incorporated in this Agreement by this reference. By clicking “I ACCEPT”, you agree to be legally bound by the SIMPLR Privacy Policy, which discusses and governs our collection and use of any information you submit to us.

### A. DEFINITIONS

1. “**Customer**” means a customer of your business.
2. “**Experts**” refers to the individuals carrying out the SIMPLR Services on your behalf.
3. “**Incomplete**” means a Customer inquiry that was not resolved to the Customer’s satisfaction (as determined by SIMPLR).
4. “**Law**” or “**Laws**” means all applicable laws and other legal obligations including, without limitation, local, state and federal directives, rules, assessments, regulations, filing requirements, ordinances, statutes, codes, judgments and civil or common law.
5. “**Personal Customer Data**” means any and all personally identifiable information about Customer collected by you and provided to SIMPLR, including, but not limited to, the Customer’s shipping addresses and email addresses.
6. “**SIMPLR Services**” shall include the support provided to your Customers by SIMPLR Experts via email, webchat, SMS and other message services.

7. “Resolved” means a Customer inquiry that was resolved to the Customer’s satisfaction (as determined by SIMPLR). If the Customer indicates the matter is complete or has had their needs addressed and subsequently receives a rating request from SIMPLR, such inquiry is considered Resolved. If SIMPLR receives no response from a Customer after a period of time mutually agreed upon between the Parties (but in no event longer than forty-eight (48) hours), the inquiry shall be considered Resolved.

8. “Term” means the term of this Agreement as defined in Section E below.

9. “Web Portal” means the website located at [www.gosimplr.com](http://www.gosimplr.com) maintained by SIMPLR or its agent which, upon becoming operational, will serve as a central repository for information related to the SIMPLR Services. For the avoidance of doubt, SIMPLR shall use your systems and website(s) until the Web Portal is operational.

## **B. OBLIGATIONS, REPRESENTATIONS & WARRANTIES, AND COVENANTS OF SIMPLR**

1. During the Term, SIMPLR shall:

- a) Perform the SIMPLR Services on behalf of your Customers (subject to your obligation to provide adequate access and information to SIMPLR as laid out in Section C(1)(a) below). SIMPLR reserves the right to establish reasonable restrictions regarding its offering of SIMPLR Services hereunder or such other services the parties may mutually agree to from time to time.
- b) Provide you with information describing the SIMPLR Services.
- c) Provide you with technical assistance regarding the Web Portal, including but not limited to, answering Customer tracking, invoicing, billing, and administration questions at times mutually agreed upon between you and SIMPLR either through a designated email address at [service@gosimplr.com](mailto:service@gosimplr.com) or via a toll-free service number.
- d) Provide customer service to you through a channel mutually agreed upon between you and SIMPLR or via email at [service@gosimplr.com](mailto:service@gosimplr.com).
- e) Track each Customer inquiry and label them Resolved or Incomplete for invoice purposes. SIMPLR shall determine in accordance with this Agreement whether each inquiry is Resolved or Incomplete; however you shall have the right to request any back-up documentation and to contest any classifications.
- f) Represent, warrant and covenant that (i) SIMPLR has the requisite corporate power and authority to execute, enter into, and perform its respective obligations under this Agreement; (ii) SIMPLR will provide the SIMPLR Services to you in a professional and workmanlike manner and in compliance with all applicable Laws; (iii) the SIMPLR Services and your use thereof do not, to SIMPLR’s knowledge, infringe upon or otherwise violate or misappropriate any copyright, patent, trade secret, trademark or other intellectual property right of any third party; (iv) the SIMPLR Services will use commercially reasonable best practices to prevent any viruses, worms, Trojan horses or malicious code; and (v) SIMPLR will secure and protect the data and information provided by you including the Personal Customer Data in a manner that meets generally accepted industry standards.

## **C. YOUR OBLIGATIONS, REPRESENTATIONS & WARRANTIES, AND COVENANTS:**

1. During the Term you shall:

- a) Ensure that all sales personnel, customer service personnel or other of your applicable personnel cooperate with SIMPLR and the Experts to ensure SIMPLR and the Experts have the adequate access to your systems and information necessary to perform the SIMPLR Services. Without limiting the foregoing, in order to provide such access, you agree to grant SIMPLR the requisite seat license(s) on your software subscriptions required for SIMPLR to perform the SIMPLR Services. Furthermore, you agree that you are responsible for maintaining the confidentiality of all login information for your software subscription accounts
  - b) After the Web Portal becomes operational, be responsible for all activities that occur under your account under the Web Portal (when the Web Portal is accessed through your login information and password). You should, therefore, not share your login information with any third parties. Unless you notify SIMPLR of any unauthorized use or suspicious activity in your account associated with the Web Portal, you are responsible for all activities that occur under your account.
2. You further covenant and agree with SIMPLR that during the Term you will:
- a) Comply with and act in accordance with any and all applicable Laws and cooperate with SIMPLR to assure compliance by both SIMPLR and you with all applicable Laws, including new laws or regulations implemented after the inception of this Agreement.

#### **D. PAYMENTS/CREDITS**

1. Payments for SIMPLR Services provided shall be mutually agreed upon by the Parties.

#### **E. TERM AND TERMINATION**

1. Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall continue in full force and effect until either Party terminates the Agreement. Either Party may terminate this Agreement at any time upon notice to the other Party through email.

2. Immediate Termination. SIMPLR may terminate this Agreement immediately upon your insolvency or if you are in violation of any Laws.

3. Effect of Termination or Expiration.

- a) Upon termination of this Agreement, you agree to stop using, remove from display and return promptly to SIMPLR any and all property (including intellectual property) owned by SIMPLR and in your possession.
- b) The following Sections of this Agreement shall survive the expiration or termination hereof: A (Definitions); F (Indemnification); G (Confidentiality); I (Intellectual Property); J (Limitation of Liability); and L (Miscellaneous).

#### **F. INDEMNIFICATION**

1. Each Party will indemnify, defend and hold harmless the other, and the other’s respective affiliates, officers, directors, employees, agents, successors, and assigns, against (i) the death or bodily injury of any individual caused by the conduct of the indemnitor; (ii) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnitor; (iii) any third-party claim arising out of or related to the

indemnitor's breach of its confidentiality obligations under this Agreement; and (iv) any failure to pay taxes owed by such Party when due.

2. You shall indemnify, defend and hold harmless SIMPLR from and against any and all third party claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with any claim that alleges infringement, violation or misappropriation of a valid third party patent, copyright or other proprietary right.

## G. CONFIDENTIALITY.

By virtue of this Agreement, each Party may have access to trade secrets and information that is confidential and/or proprietary to the other Party (collectively "**Confidential Information**"). The Party which owns and discloses to the other Party Confidential Information shall be referred to herein as the "**Disclosing Party**" and the Party to which the Disclosing Party discloses Confidential Information shall be referred to herein as the "**Receiving Party**." Confidential Information shall include, but is not limited to, information regarding each other's operations, data processing and procedures, billing and collection procedures, formulas, methods, know-how, processes, data, designs, new products, developmental work, marketing requirements, marketing plans, the terms and pricing under this Agreement, and all information identified by the Disclosing Party at the time of disclosure as confidential or proprietary. Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party. The Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and not to disclose such Confidential Information. The Receiving Party agrees, unless required by law, not to make the Disclosing Party's Confidential Information available in any form to any third party or to use the Disclosing Party's Confidential Information for any purpose other than the implementation of this Agreement. Confidential Information may be shared with the Receiving Party's employees or agents on a need to know basis only. The Receiving Party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by such agents or employees in violation of the terms of this Agreement. If disclosure of any Confidential Information is compelled by court order, subpoena or other legal process, the Receiving Party shall give the Disclosing Party reasonable prior notice if possible to enable the Disclosing Party to consent to such order or seek a protective order or other appropriate remedy. The Parties agree that any breach of obligations under this Section G will be a material breach of this Agreement and result in irreparable harm to the Disclosing Party, for which damages may be an inadequate remedy. In addition to the rights and remedies otherwise available at law, the Disclosing Party will be entitled to seek equitable relief, including injunction without the necessity of posting a bond, in the event of such breach and to recover its reasonable attorneys' fees. The Receiving Party agrees to be responsible for any breach of this Section G by any Representative acting within its reasonable control, including the payment of court costs and legal fees. The obligations under this Section G shall survive for five (5) years following the expiration or termination of this Agreement.

## H. DATA

### 1. Personal Customer Data

- a) Customer Privacy. You shall communicate to Customers and any applicable third party and obtain any applicable required rights and consent that Personal Customer Data will be provided to third parties as needed, and will be available to other providers participating in SIMPLR Services.
- b) Ownership of Personal Customer Data. You hereby grant to SIMPLR an irrevocable, unlimited, nontransferable right to use Personal Customer Data that SIMPLR captures as part of performing the

SIMPLR Services. SIMPLR agrees not to use any identifiable Personal Customer Data provided by you for any purpose other than performing its obligations under this Agreement.

- c) Your Obligations. You agree to SIMPLR's Privacy Policy and further agree (a) that you are solely responsible for the accuracy and content of your data (which includes any Personal Customer Data); and (b) that your use of SIMPLR, including your data and its use hereunder, will not violate any Laws or third party rights, including intellectual property, privacy or publicity rights.

## 2. Collecting Usage Data.

- a) Definition. For the purposes of this section, "**Usage Data**" means aggregated, encoded or anonymized data that SIMPLR may collect about a group or category of services, features or users while you use the SIMPLR Services, including analytics, and which does not contain Personal Customer Data, which is used to help understand trends in usage of the SIMPLR Services.
- b) Uses. In addition to collecting and using Usage Data, SIMPLR may share Usage Data with third parties, including SIMPLR subscribers, partners and service providers, for various purposes, including to help SIMPLR better understand such subscribers', partners' and service providers' needs and to improve the SIMPLR Services. SIMPLR may also use Usage Data to provide relevant information about the SIMPLR Services and for purposes of marketing.
- c) Aggregated Personal Customer Data that is not personally identifiable. SIMPLR may anonymize the Personal Customer Data of your Customers so that they cannot be individually identified, and use this anonymized information, as segmented by industry, geography and other metrics to provide qualitative insight on customer support metrics and other relevant insights. SIMPLR may also provide aggregate usage information to its affiliates for analytics purposes, who may use such information to help SIMPLR understand how often and in what ways people use the SIMPLR Services. However, SIMPLR shall never disclose aggregate information to an affiliate in a manner that would identify your Customers personally, as an individual.

## I. INTELLECTUAL PROPERTY.

During the Term and subject to the terms of this Agreement, each Party hereby grants the other the right and license to use their trademarks as necessary to promote the SIMPLR Services in accordance with this Agreement. Each Party reserves and retains all right, title, and interest, including all trademark and copyrights, in their intellectual property used in connection with this Agreement (and all developments, enhancements or modifications made thereto), and no title to or ownership of any of such intellectual property is transferred to the other Party under this Agreement. If you submit comments or ideas about the SIMPLR Services, including ways to improve the SIMPLR Services ("Ideas"), you agree that your submission is gratuitous, unsolicited and without restriction. It does not place SIMPLR under any fiduciary or other obligation, and SIMPLR is free to use the Ideas without compensation to you and/or to disclose the ideas to anyone on a non-confidential basis. You further acknowledge that SIMPLR does not, by acceptance of your submission, waive any rights to use similar or related Ideas previously known to SIMPLR, or developed by SIMPLR's employees or obtained from sources other than you. Neither Party to this Agreement obtains a right to use the other Party's intellectual property rights or their trademarks beyond the Term of this Agreement.

## J. LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SIMPLR DOES NOT MAKE ANY, AND HEREBY DISCLAIMS ANY, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO ITS SERVICES UNDER SIMPLR SERVICES, OR ANY OF ITS OTHER OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY'S LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY

DAMAGES OR OTHER LOSSES RELATING IN ANY WAY TO THIS AGREEMENT, WHETHER OR NOT BASED IN WHOLE OR PART ON NEGLIGENCE OR ANY OTHER CAUSE OF ACTION, SHALL EXCEED THE AMOUNTS PAID BY YOU TO SIMPLR HEREUNDER DURING THE ONE YEAR PERIOD IMMEDIATELY PRIOR TO THE FIRST DATE ON WHICH A CLAIM FOR DAMAGES AROSE. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER OR A BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION G, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFIT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT SUCH PARTY, ITS EMPLOYEES, AGENTS OR ASSIGNS, MAY SUFFER WHICH ARE CAUSED BY OR RESULT FROM THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **K. ELECTRONIC SIGNATURES AND CONTRACTS**

1. Electronic Agreements. Your use of the Web Portal (upon its activation) includes the ability to enter into agreements or to make transactions electronically. You acknowledge that your electronic submissions constitute your agreement and intent to be bound by and to pay for such agreements and transactions. Your agreement and intent to be bound by electronic submissions applies to all records relating to all transactions you enter into on this website, including, but not limited to, notices of cancellation, policies, contracts, and applications.

2. Electronic Records. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

#### **L. MISCELLANEOUS**

1. The laws of the State of Delaware (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

2. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement will remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

3. The Parties can waive terms of this Agreement only by a writing executed by the Party against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given does not constitute a waiver for any future occasion or against any other person.

4. SIMPLR may send you a notice with respect to SIMPLR Services by sending an email message to the email address in your contact information, by sending a letter via postal mail to the contact address listed in your contact information, or by a posting on the Web Portal. Notice shall become effective immediately.

5. This Agreement shall be binding upon and shall inure to the benefit of each Party and its respective successors and permitted assigns. Neither party shall, directly or indirectly, assign this Agreement without the prior written consent of the other party unless such assignment is (i) to an affiliate of such Party. or (ii) in connection with any merger or change of control or the sale of all or substantially all of its assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement. Any assignment not made in compliance with this paragraph shall be deemed null, void and of no effect.

6. This Agreement supersedes any other agreement, written or oral, that may have been made or entered into by the Parties hereto (or by any director, officer or representative of any such Party) relating to the matters contemplated hereby. This Agreement may be subsequently amended by "click through" or other electronic

signature. This Agreement constitutes the entire agreement by and among the Parties with respect to the subject matter hereof and there are no agreements or commitments except as expressly set forth herein.

7. Titles and headings to articles and sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

8. In the exercise of its rights and the performance of its obligations hereunder, each Party will act solely as an independent contractor, and nothing contained herein shall be construed to create a relationship of agency, partnership or joint venture between any of the Parties. Each of the Parties covenants and agrees that it shall not have or hold itself out as having any right, authority or agency to act on behalf of any other Party in any capacity or in any manner except as specifically authorized in this Agreement, and none of the Parties shall become liable to any person by reason of any representation, action or omission contrary to this provision.

9. Most of your concerns about the Services can be addressed by contacting SIMPLR at [hello@simplr.ai](mailto:hello@simplr.ai). For any dispute with SIMPLR, you agree to first contact SIMPLR and attempt to resolve the dispute informally. In the event SIMPLR cannot resolve any dispute with you, **YOU AND SIMPLR AGREE TO RESOLVE THOSE DISPUTES THROUGH BINDING ARBITRATION OR SMALL CLAIMS COURT INSTEAD OF THROUGH COURTS OF GENERAL JURISDICTION. YOU AND SIMPLR AGREE TO WAIVE OUR RIGHTS TO A TRIAL BY JURY AND TO PARTICIPATE IN CLASS ACTIONS OR OTHER REPRESENTATIVE PROCEEDINGS.** The Parties agree that any disputes between them relating to or arising out of this Agreement shall be resolved by confidential and binding arbitration conducted in accordance with the procedures set forth below:

(a) This Arbitration Agreement ("A.A.") shall survive the termination of the Agreement and is governed by the Federal Arbitration Act. This A.A. shall be interpreted broadly, and it includes any dispute you have with SIMPLR that arises out of or relates in any way to your relationship with SIMPLR or the SIMPLR Services, whether based in contract, tort, statute, fraud, misrepresentation or otherwise. However, this A.A. does not preclude you from bringing an individual action against SIMPLR in small claims court or from informing any federal, state or local agencies of your dispute. Such agencies may be able to seek relief on your behalf.

(b) To initiate arbitration, send a written Notice of Claim by certified mail to: SIMPLR, Legal Department, 450 Townsend Street, Suite 204, San Francisco, CA 94107. The Notice must describe the dispute and the relief sought. If SIMPLR does not resolve the dispute within 30 days of receipt of the Notice, you may start an arbitration with the American Arbitration Association ("AAA"). You can contact the AAA and obtain a free copy of the rules and forms necessary to start an arbitration proceeding at [www.adr.org](http://www.adr.org) or 1-800-778-7879. SIMPLR will reimburse you for a filing fee paid to the AAA, and if you are unable to pay a filing fee, SIMPLR will pay it if you send SIMPLR a written request.

(c) The arbitration shall be administered by the AAA in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes ("Rules") in effect at the time the arbitration is started and as modified by this A.A. The arbitrator is bound by the terms of this A.A. and shall decide all issues, with the exception that issues relating to the enforceability of this A.A. may be decided by a court. If your dispute is for \$25,000 or less, the arbitration will be conducted by submitting documents to the arbitrator, unless you request an in-person or telephonic hearing or the arbitrator decides that a hearing is necessary. If your dispute is for more than \$25,000, the right to a hearing will be determined by the Rules. Unless otherwise agreed, any hearings will take place in San Francisco, San Francisco County, California. The Parties agree to pay an equal share of all filing, administration and arbitrator fees for any arbitration, unless your dispute is found by the arbitrator to have been frivolous or brought for an improper purpose under Federal Rule of Civil Procedure 11(b). In that case, the Rules govern payment of such fees.

(d) The arbitrator shall issue a decision including the facts and law upon which his/her decision is based. Each Party shall bear its own attorney's fees and expenses incurred in the arbitration, and hereby waives any right it may have under applicable law to recover attorney's fees and expenses from the other Party as a result of prevailing in the arbitration.

(e) If either Party seeks declaratory or injunctive relief, that relief can be awarded only to the extent necessary to provide the disputing Party relief. **YOU AND SIMPLR AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST EACH OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT IN A PURPORTED CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE PROCEEDING.** Unless you and SIMPLR agree otherwise, the arbitrator may not consolidate your dispute with another person's dispute and may not preside over any form of representative proceeding. If this specific provision A.A. is found to be unenforceable, then the entirety of this A.A. is null and void

10. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than the Parties any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby, except the permitted assigns of the Parties.

11. Where the terms of this Agreement require approval by either Party, approval requests shall be considered timely and in good faith, and approvals shall not be unreasonably withheld.

12. Your and SIMPLR's obligations under this Agreement which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including, by way of illustration only and not limitation, those relating to payments, warranties, indemnification and confidentiality, shall survive termination, cancellation or expiration of this Agreement.