

---

## REALLY SIMPLE SYSTEMS SUBSCRIPTION AGREEMENT

---

This Agreement is made between Really Simple Systems Limited, a limited company registered in England Number 1827381 whose office is at Rookery Farm, Ramsdean, Petersfield GU32 1RU, United Kingdom (“RSS”); and You or the Organisation that you represent.

### Definitions

“You” and “Your” shall mean both you in your personal capacity and the organisation that you represent.

“Services” shall mean any of RSS’s hosted services.

“Subscription” shall mean the use of any of RSS’s Services, whether free, trial or paid for.

“Documentation” shall be the Services help and support pages on RSS’ web site.

“Customer Data” shall mean any of your data or documents that you upload onto the Services.

“Price List” shall be the current prices and currencies as published on RSS’s web site.

### Representations

You represent that you are of legal age to enter into this binding agreement, that you do not work for a competitor either as an employee or as a subcontractor, that you will only use the Subscription for the purposes of evaluating or using the Services and that you will not use the Subscription for benchmarking or testing purposes or in the pursuit of any legal claim.

### Use of Services

By completing the registration page on our web site and ticking the checkbox to accept the terms, or by using the Services, you are agreeing to this contract.

RSS grants you use of the Services providing you have correctly entered your details on the registration page.

You may use the Services either for yourself or the organisation that you represent.

### Customer Data

You retain all rights and ownership to Customer Data.

RSS will use its best endeavours to keep Customer Data confidential and secure.

RSS will take a snapshot backup of Customer Data once a day and store the backup securely off-site.

RSS will maintain a standby system available with a replicated copy of the Customer Data available for switch over should the production system fail.

Customer Data will be kept within the European Community in compliance with the EC Data Directives and GDPR.

In the event of a dispute as to who in the Customer’s organisation the Customer Data belongs to, RSS will determine that the Customer Data belongs the CRM User who is the Administrator.

If you are on the Free price plan and you have not logged in to the Service for three consecutive months you will be sent a notification email that your Customer Data will be deleted, and if you have still not logged after another month then your Customer Data will be deleted off our servers.

If you are on a paid-for plan and your subscription expires then your data will be deleted three months after the date of expiration of your subscription.

Once deleted Customer Data can only be restored on payment of an administration fee.

### **GDPR Compliance**

RSS warrants that its Service complies with The General Data Protection Regulation (GDPR), that all Customer Data is stored in the EU, that RSS has a Data Protection Officer, a Breach Notification Process, policies for Right to Erasure & Data Portability and that all staff are subject to a Customer Data Access Policy enforced in their employment contracts.

You warrant that your use of the Services will also comply with GDPR including but not limited to Data Breach Notification, processing personal information, sending emails and complying with Right to Erasure and Data Portability requests.

### **Availability**

RSS will use its best endeavours to make the Services available 24/7/365.

Should the Services need to be suspended for essential maintenance, RSS will give you fair warning by means of a notice on the Services.

### **Email Marketing**

If you use our Marketing Module to send mass emails you must comply with our [Sending Policy](#). You will not use the mass emailing functionality to send unsolicited emails in contravention of UK, EC or your own country's laws. RSS reserve the right to terminate your ability to send mass emails if in RSS' opinion, you are sending them without consent where needed.

RSS may delay sending your emails if sufficient numbers of them bounce or are marked as spam by the recipients.

### **Payment**

Payment may be made by credit or debit card or, in the UK, by direct debit. RSS will charge you on a monthly basis in accordance with the price plan that you have purchased, seven days in advance of your renewal date, unless you and RSS have agreed credit terms.

If credit terms have been agreed then RSS will send you an invoice 45 days in advance of your subscription renewal date.

If payment is not received before your renewal date then you will not be able to log on to your system until payment is received.

Once a payment has been made no refunds will be given for early termination of use.

Pricing and charges will be in accordance with the current price list as show on RSS' web site.

RSS will give you 30 days' notice of intended changes to the pricing and charges.

If you have an annual price plan you must give 14 days' notice before cancellation.

## **Publicity**

You will allow your name to be published on our web site and other marketing materials as a customer of ours.

## **Term and Termination**

This agreement starts on the day you accept it. For paid Subscriptions this agreement terminates 90 days after the Subscription expires. For free Subscriptions it terminates 90 days after your last login date. For trial Subscriptions it expires at the end of the trial, unless a paid or free Subscription is then taken up.

RSS reserves the right to cancel a subscription at any time if it believes that you are using the system for any illegal activity, or that the information you have given us is false.

## **Limited Warranties**

RSS warrants that it has full power and authority to grant you the rights granted herein.

RSS warrants to you that RSS owns or is licenced to use all intellectual property rights in the Service and Documentation.

RSS shall defend, indemnify and hold you harmless from and against any liability under any final judgement or settlement made in relation to any proceedings brought against you in the event that such proceedings are based on a claim that the Service infringes a third party's intellectual property rights provided that (a) you notify RSS in writing of the claim immediately after it has been made, (b) you turn over to RSS exclusive control over the defence and settlement of the claim, (c) you provide such assistance in defence of the proceeding as RSS may reasonably request, at RSS' reasonable expense, (d) you make no admission in respect of any claim, and (e) you shall use all commercially reasonable efforts to mitigate any loss, damage or costs related to the claim. RSS' obligations under this sub-clause will not apply to the extent that the infringement claim is based on (i) use of the Service after RSS notifies you to discontinue use due to such a claim, allegation or proceeding; (ii) the combining of the Service with a non-RSS product, data or business process; (iii) use of, or access to, the Service or Documentation other than in accordance with the terms of this Agreement; or (iv) a non-RSS employee or representative altering the Service. You will indemnify, keep indemnified and hold RSS harmless from and against any loss, damage, cost, expense or liability arising from such actions.

If your use of the Service is, or in RSS' reasonable opinion is likely to become, enjoined as a result of a claim of infringement of any intellectual property right of any third party, then RSS shall at its sole option either: (i) procure the continuing right of Customer to use the Service; or (ii) replace or modify the Service in a functionally equivalent manner so that it no longer infringes; and if, despite its commercially reasonable efforts, RSS is unable to do so, RSS will (iii) terminate this Agreement with respect to the Service subject to the infringement claim and refund to you an amount equal to the subscription paid by you for such Service. The remedies provided above are your sole and exclusive remedies for any and all potential or actual claims of patent, copyright, trade mark or other intellectual property right infringement.

You shall ensure that you obtain all necessary consents relating to the possession, operation or use of the Service and all acts relating thereto including without limitation appropriate consents required under any data protection legislation applicable to you. You shall indemnify, keep indemnified and hold harmless RSS from and against any loss, damage, cost, expense or liability incurred by RSS as a

result of your failure to obtain such consents or to comply with the obligations set out in this sub-clause. RSS warrants to you that the Service as delivered by RSS to you will perform substantially in accordance with the applicable specifications set out in the Documentation. If the Service fails to comply with the warranty set out in this clause and you provide written notice of the non-compliance to RSS, then RSS' entire liability and your sole remedy for any non-conformance with the foregoing warranty shall be for RSS to use its reasonable endeavours to provide a fix to enable the Service to perform substantially in accordance with the applicable specifications set out in the Documentation.

RSS does not warrant that the Service will be free from viruses, Trojan horses, bugs, omissions or errors, or that deficiencies or defects in the Service will be corrected. The warranty in clause above is the sole and exclusive warranty made by RSS to you in respect of the performance of the Service.

Except as otherwise expressly provided in this agreement, all other warranties, conditions, terms and undertakings of any kind (including without limitation as to quality, performance or fitness for purpose) in relation to the Service, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise are hereby excluded to the fullest extent permitted by law.

### **Limitation of Liability**

Except in the cases of death or personal injury caused by the negligence of RSS and loss or damage caused by the fraudulent misrepresentation of RSS, or in other circumstances where liability may not be so limited under applicable laws, the liability of RSS under or in connection with this agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall in no circumstances exceed the amount paid by you to RSS under this agreement for the year in which the claim arose or £100,000 (One Hundred Thousand British Pounds) whichever is the lesser, regardless of the form of action, even if that loss or damage was reasonably foreseeable or either party was aware of the possibility of that loss or damage arising.

RSS shall not be liable to you in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by you of a special, indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business, contracts, use, reputation or goodwill or any deletion, corruption, destruction, loss or removal of data, or any loss or damage suffered by you as a result of a claim brought by a third party even if such loss was reasonably foreseeable or one party had advised the other of the likelihood of their incurring the same.

### **Miscellaneous**

This Agreement contains the whole agreement and understanding between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous written, electronic or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. However, nothing in this Agreement purports to exclude liability for any fraudulent misrepresentation or act.

RSS may modify these terms at any time upon notice delivered to you by email or on our web site. Should the change substantially affect your rights you may terminate the agreement within 30 days. Your continued use of the Services after being notified of any change will be deemed acceptance of those changes.

RSS is an independent contractor and neither RSS, nor its employees, subcontractors or consultants shall be deemed your employees and nothing in this Agreement shall constitute or imply any partnership, joint venture, agency or fiduciary relationship between the parties.

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

You shall not assign, delegate, subcontract, mortgage, charge or otherwise transfer all or any of your rights or obligations under this Agreement without the prior written consent of RSS, which shall not be unreasonably withheld. RSS may assign all or any of its rights or obligations under this Agreement. RSS shall be entitled in the normal course of business to use subcontractors or consultants for the performance of its obligations under this Agreement.

The headings in this Agreement are inserted for convenience only, and do not affect its construction or interpretation.

The governing language for this Agreement, for the transactions contemplated hereby, for any notices instruments or other documents or media transmitted or delivered hereunder, and for the negotiation and/or resolution of any dispute or other matter between the parties, shall be the English language; where a document relating to this Agreement is not available in English, an English language version shall be provided by you on request. In the event of any conflict between the provisions of any document in any other language and an English language version thereof, the provisions of the English language version shall prevail. You hereby waive all and any rights you may have under any law in any country or part thereof to have the Agreement written in any language other than English.

All payments under this Agreement, unless expressly stated otherwise, shall be in the nominated currency for your country, as published on the current price list.

No failure or delay by either party in exercising or enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

No amendment, waiver or variation of this Agreement shall be binding on the parties unless set out in writing, expressed to amend or vary this Agreement and signed by an authorised representative of each of the parties.

The obligations of each party under this Agreement shall be suspended during the period, and to the extent, that party is prevented or hindered from complying with them by any cause beyond its reasonable control including, without limitation, strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining employees, materials, goods or raw materials in connection with the performance of this Agreement. In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the rights of that party to claim force majeure. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party.

## Notices

Unless expressly stated elsewhere in this Agreement, any notice, invoice or other communication under this Agreement shall be in writing and shall be sent or delivered by hand, or by nationally recognised private courier (e.g., Federal Express), or by first class mail or air mail, or by fax (confirmed by first class mail or air mail), to the address or fax number of RSS or you (as applicable) set out in this Agreement, or to such other address or fax number as RSS or you (as applicable) may notify the other party.

Notices sent or delivered as above shall be deemed to have been received upon delivery (in the case of delivery by hand or courier), upon the third working day after the date of posting (in the case of inland first class mail), upon the seventh working day after the date of posting (in the case of air mail), and on the next working day after the date of the fax (provided that a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine to the effect that all pages were successfully transmitted). This Agreement and performance under it shall be governed by and construed in accordance with the laws of England and Wales. Any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts in England to which each party hereby submits.

If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of this Agreement, such party's reasonable lawyer's and other experts' (including without limitation accountants) fees and expenses.

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement or operates to give any third party the right to enforce any term of this Agreement except as expressly provided herein.

Version: April 2018

Copyright © 2004 - 2018 Really Simple Systems. All rights reserved.