



Help Documentation

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- * Features selection(s), including, but not limited to, "Professional," "Enterprise", and "Free" editions

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* Services, support, advice, and recommendations related to this Software that may be made available by SmarterTools on the Internet, in the Software documentation, or by telephone

* Any and all Technical Support Services offered in connection with the Software

DEFINITIONS

The following definitions shall apply for the purposes of this EULA:

* "Dedicated Hosting" shall refer to an individual, group, or organization ("Dedicated Host") that maintains a physical server device that is wholly or, in the case of Virtual Private Servers ("VPS"), a dedicated portion of a physical server device that is sold, leased, or otherwise made available to a third party; whether or not a fee or other compensation is exchanged; and in which the third party has authorization and/or access to the activation areas of the software and/or to system administration functions.

* "Effective Date" shall be the date upon which this EULA was accepted by You.

* "Elastic Computing" shall refer to a user's ability to install software, create websites or instantiate a database on one or more Workers that can then be given incremental CPU cycles or percentages, memory (RAM) allocations, and/or physical disk space and bandwidth allocations that can all, then, be managed (increased or decreased) separately and on an as needed basis.

* "Failover" is the ability of a system to automatically switch to a second, standby system should the primary system fail or is temporarily shut down.

* "License" shall refer to the revocable, non-exclusive, non-transferable license to use the Software ("License") in accordance with the terms and conditions of this EULA. The term License applies to purchased and non-purchased Licenses, including but not limited to the object code, source code, and any accompanying alphanumeric combinations used to enable and/or activate the software or certain Features Selection(s) in the Software (collectively, "License Keys").

* "License Key" shall apply to the alphanumeric combination entered/applied upon installation and used to access Feature Selections. License Keys are delivered to the owners of purchased (paid for) Licenses and to those who may receive authorized promotional or trial Licenses, if applicable (pursuant to this EULA). SmarterTools may create and provide certain Levels, Editions, and/or Versions of the Software that do not require entry or use of a License Key for promotional or other purposes. This EULA remains in full force and effect whether or not a License Key is required or provided by SmarterTools.

* "Load Balancing" is a networking methodology whereby processing and workload is distributed evenly among a group of independent machines (e.g., servers) so that no single device is overwhelmed and so that there is no single point of failure.

"Multi-tenancy" and "Multi-tenant license(s)" shall refer to the ability of any single license to support multiple separate and unique client organizations, particularly when offering a single license in a Software as a Service (SaaS) capacity. For the purposes of this EULA, only SmarterStats and SmarterMail are multi-tenant licenses.

* "Periodic License" shall be a License with a defined temporal component (start and end date) whether or not such License is subject to renewal, automatically renews, effectively terminates, or is extended (e.g., Monthly/Lease Licenses, Trial Licenses, Development Licenses). Periodic Licenses may be governed by additional terms and conditions in a separate written agreement.

* "Third Party Providers" shall be any other software, application, plug-in, add-on, utility, tool, device, or methodology by any individual, group, organization, affiliation, company, or other entity that connects, modifies, links, and/or integrates to/with the Software for any purpose whatsoever.

* "Shared Hosting" shall refer to an individual, group, or organization ("Shared Host") that maintains a physical server device upon which software and/or tools are owned and installed by the Shared Host and made available to third parties for access or use; whether or not a fee or other compensation is exchanged; and in which the third parties do not have authorization or access to the activation areas of the Software and/or do not have authorization or access to system administration functions.

* "Worker(s)" shall be the location where software, websites or databases are installed in an Elastic Computing environment. A Worker can then have CPU cycles, disk space and RAM allocations and bandwidth modified (i.e., increased or decreased) on an as needed basis to accommodate shifts in traffic and usage. Also known as a worker process.

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A. Grant of License.

Upon the the Effective Date, SmarterTools hereby grants You a revocable, non-exclusive, non-transferable license to use the Software ("License") in accordance with the terms and conditions of this EULA. This License shall commence on the Effective Date of this EULA and shall remain in effect until terminated in accordance with the terms of this EULA or superseded by another end user license agreement pursuant to installation of an Update or changes in Features Selection. SmarterTools, together with any third party content providers whose software code is incorporated in the Software or distributed with it, retains all right, title, and interest to the Software, including, but not limited to, copyrights, trademarks, proprietary methods, and trade secrets incorporated into the Software.

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SmarterTools does not warrant that the Software will meet Your requirements, that the operation of the Software will be uninterrupted or error-free; that any data supplied by the Software will be accurate; or that the Software will work with any 3rd-party or supplemental software or hardware furnished with or accompanying the Software. Further, SmarterTools does not warrant the efficacy, functionality, or operation of such Accompanying Software or Hardware. ALL HARDWARE, SOFTWARE, OR OTHER PRODUCTS OR SERVICES PROVIDED BY SMARTERTOOLS UNDER THIS EULA ARE PROVIDED AS-IS, AND SMARTERTOOLS EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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C. Third Party Providers and Web Services

The Software is designed to integrate and/or to be used in conjunction with Third Party Providers through Web services. SmarterTools assumes no liability and makes no warranty or guarantee regarding the applicability of effectiveness of this Software when used in conjunction with these products or whether or not such integration or use might interfere with the operation therein. You agree to hold SmarterTools harmless in all matters resulting from the integration or use with Third Party Providers.

D. Limitation of Liability

Your sole remedy under this Agreement shall be limited to replacement of the Software.

4. Technical Support

Currently, SmarterTools provides technical support for the Software via SmarterTools personnel, documentation, and Internet resources. Depending on Your Features Selection, including but not limited to pricing, volume, Software version, and the number of licenses You purchased, a certain amount of technical support may be included at no additional charge. Otherwise, technical support may be available for an additional charge on a per incident, per call, or per time-frame basis or in other support packages. The amount of these charges may vary from time to time. Technical support is provided AS-IS, and the provisions of section 3.A., 3.B., and 3.C. apply to technical support.

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7. Jurisdiction.

This Agreement shall be governed in all respects by the laws of the United States and the State of Arizona, except for conflict of law's provisions. The parties agree that for any dispute, controversy, or claim arising out of or in connection with this Agreement, venue and personal jurisdiction shall be in the federal, state, or local court with competent jurisdiction located in Maricopa County, Arizona. The prevailing party will be entitled to an award of reasonable attorney's fees.

In the case that You are an agency or entity of the United States Government, the following additional terms apply:

* The Software qualifies as Restricted Computer Software, as defined in the Rights in Data-General clause at Federal Acquisition Regulations 52.227-14.

* Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013.

8. Payments.

You shall pay the total fee(s) for the Software imposed by SmarterTools at the time of purchase. You shall pay all invoices rendered by SmarterTools within thirty (30) calendar days after the invoice date, or within another time frame set forth by SmarterTools in writing in a separate agreement. All payments shall be made in United States Dollars (\$). If You fail to pay any amount due within the above timeframe, SmarterTools may impose late charges equal to the lesser of 1.5% per month or the highest interest rate allowable by applicable law, together with all related expenses and collection costs, including reasonable attorneys' fees, incurred by SmarterTools collecting any amounts owed under this EULA. Further, You shall reimburse SmarterTools for any out-of-pocket expenses incurred in connection with duties performed by SmarterTools hereunder. Upon request by You, SmarterTools shall provide You with reasonable documentation evidencing the out-of-pocket expenses incurred by SmarterTools.

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Should You choose to alter the appearance and/or user interface of the Software (the "Skin") by using the custom style or Skin options included in certain versions of the Software or by using a third-party process to alter the appearance or interface of the Software, the following requirements must be met:

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At purchase of the Software and at other times during the term of this EULA You will be required to supply certain information including, but not limited to, email address(es), password(s), personal and/or company information, payment information (e.g. credit card information), and/or other personally identifiable and potentially valuable information. Acceptance of this Agreement indicates Your willingness to provide this information and have it transmitted to SmarterTools via internet, phone, facsimile, verbally, or otherwise and Your assumption of the incumbent risks associated with such transfers. SmarterTools takes the privacy and security of data very seriously and will make efforts to protect data in accordance with our privacy policy. A copy of the SmarterTools privacy policy is available by request. In any event, SmarterTools and its suppliers, licensors, successors, affiliates, agents, employees, executives, and assigns shall not be liable for any stolen, misdirected, or otherwise mishandled information pursuant to this EULA.

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12. Severability.

The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision(s) will not affect the validity or enforceability of any other provision(s) herein.

13. Entire Agreement.

This EULA constitutes and expresses the entire agreement and understanding between the parties hereto with respect to the subject matter, all revisions discussions, promises, representation, and understanding relative thereto, if any, being herein merged. This Agreement replaces and supersedes any prior agreement entered into between the parties hereto with respect to the subject matter herein.

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