



## Terms of Service

**License.** Use of the SmartEquip Service is permitted for licensed Users only. SmartEquip hereby grants to the Customer a non-exclusive, non-transferable, limited license, without the right to sublicense, to use SmartEquip Services, and to permit Customer's Users to access SmartEquip Service, subject to the terms and conditions in the Terms of Service. "Customer's Users" shall be defined as any persons or entities that are authorized by Customer to have access to the Customer's SmartEquip Services. Use of the SmartEquip Service shall be contingent upon agreement that you will neither sublicense, transfer, distribute or provide access to SmartEquip Services, or any portion thereof, to any third party except for authorized Users, nor allow SmartEquip Services to be distributed by any other party, without the prior written permission of SmartEquip.

**Reservation of Rights.** SmartEquip reserves all other rights to SmartEquip Services including without limitation the right to access and modify SmartEquip Services for training, maintenance, upgrades, and security purposes.

**SmartEquip Property.** All worldwide right, title, and interest in and to any and all aspects of SmartEquip Services, in whole and in part, including but not limited to the look and feel of the template pages, all source code, and all intellectual property and/or proprietary rights therein, including without limitation, copyright, moral rights, patent rights (including patent applications and disclosures), trademarks, rights of priority, publicity rights, and trade secret rights, recognized in any country or jurisdiction in the world are the sole and exclusive property of SmartEquip. The SmartEquip Property shall include all changes and additions to the SmartEquip Services and all derivative works thereof.

**Proprietary Notices.** Customer acknowledges that SmartEquip Services shall include certain copyright notices of SmartEquip. Customer shall not alter, modify or remove such notices, or take any action to hide the display of such notices. Customer shall display SmartEquip Services with links to such disclaimers and terms of services.

**Support of Customer's Users.** You shall be solely responsible for providing all front-line support to your authorized Users at any of your site(s).

**Use Policies.** You shall adopt and enforce such policies, procedures and monitoring mechanisms as are necessary to ensure that SmartEquip Services are used only in accordance with the terms of this Agreement.

**Confidentiality.** You shall take all steps necessary to ensure that the your Employees and your Users keep the SmartEquip Services confidential including, without limitation, any logon identifications and/or passwords and ensure that such information is not shared with other employees or third parties.

**Warranty.** NEITHER SMARTEQUIP OR ANY OF ITS INFORMATION PROVIDERS MAKE ANY WARRANTY OF ANY KIND IN CONNECTION WITH THE SMARTEQUIP SERVICES, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE DATA OR SERVICES AND ANY ORDERS OR ANY OTHER INFORMATION, SERVICES OR MATERIALS PROVIDED OR MADE AVAILABLE BY SMARTEQUIP OR ITS INFORMATION PROVIDERS HEREUNDER, AND SMARTEQUIP AND ITS INFORMATION PROVIDERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SMARTEQUIP AND ITS INFORMATION PROVIDERS EXPRESSLY DISCLAIM ANY WARRANTY REGARDING, AND SMARTEQUIP AND ITS INFORMATION PROVIDERS SHALL NOT BE LIABLE FOR, THE TIMELINESS, ACCURACY OR COMPLETENESS OF THE CONVERTED DATA OR SERVICES OR ANY ORDERS OR FOR ANY MODIFICATIONS TO THE CONVERTED DATA OR SERVICES BY CUSTOMER OR ANY THIRD PARTY.

**Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE CONVERTED DATA OR SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**Governing Law and Dispute Resolution.** The Terms of Service and Use of the SmartEquip Services shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to its conflicts of laws principles. All disputes arising out of the execution, interpretation or performance of this Agreement shall be decided through binding arbitration by private arbitrators. Arbitration shall be conducted in Norwalk, Connecticut. The arbitrators shall use the Commercial Arbitration Rules of the American Arbitration Association, and are authorized to award injunctive relief. If the parties are unable to agree upon a single arbitrator, each party shall select one arbitrator, and the two arbitrators so selected shall appoint a third arbitrator. No arbitration hereunder shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent of both parties. This Agreement to arbitrate, and the arbitrators' award, shall be specifically enforceable in accordance with applicable law in a court having proper jurisdiction. Judgment entered upon the award by the arbitrator(s) may be entered in a court having jurisdiction thereof. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the parties. Nothing in this section, however, shall prevent either party from seeking equitable relief from a court of competent jurisdiction for the other party's breach of the confidentiality obligations or infringement of intellectual property rights and any proprietary sections of this Agreement.

[www.smartequip.com](http://www.smartequip.com)

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