

## 2Build a Profile – Terms of Licence and Use

This Agreement details the licence we grant you and governs your use of 2Build a Profile ("2BAP"). By using 2BAP you are agreeing either yourself or on behalf of your establishment to the terms that appear below whether you or your establishment have purchased or another party, for example only your Local Authority, is paying for the subscription.

### THE HEADLINES

The headlines of our Terms and Conditions are below (please do take the time to read the detailed terms and conditions that follow these headlines "the fine print", as you *will* be bound by them and we cannot cover all the important terms in these headlines):

1. You can use 2BAP with limited functionality for free, but for access to most of the features you will need to buy a subscription.
2. Your subscription is limited to the agreed setting (which doesn't extend to chains, federations etc. unless specifically agreed in writing), can't be transferred to anyone else, and can only be used on the number of devices that you've bought a subscription for.
3. When your subscription expires we'll keep your data for 30 days, but after that we reserve the right to delete it.
4. You are responsible for keeping your passwords and logins secure and for using PIN codes where possible.
5. You are also responsible for keeping a record of all devices on which 2BAP is installed.
6. We will do our best to make sure that all the information and guidance in 2BAP is accurate, but this doesn't amount to a warranty.
7. We will try to make sure that 2BAP is available as close to 100% of the time as we can, but we can't be liable for any losses that result if the service is unavailable.
8. We will do everything we reasonably can to keep your data secure and we will take all reasonable steps to comply with the requirements of the Data Protection Act.
9. If you wish to make a legal claim which relates to your use of 2BAP, the most you will be able to recover is the amount you have paid in any given subscription period for 2BAP. We won't be liable for any pure economic loss you suffer in any circumstances.
10. We have an additional [Security and Privacy policy](#), which covers how we will use any personal information you supply us with.

# THE FINE PRINT

These are our legally binding Terms and Conditions applicable to all use of 2Build a Profile, which consists of a Web Suite ("the Web-Suite") and an application or "app" which runs on certain tablet computers and some smartphones ("the Devices" or "Device").

## 1 Provision of Service

1.1 The Licence to use 2Build a Profile ("2BAP") is granted to you by 2Simple Ltd. Company number 03843465 ("2Simple"), whose registered office is at 5 Broadbent Close, Highgate, London N6 5JW. All references to "we" or "2Simple" in this document refer to 2Simple Ltd.

1.2 The free version of the 2BAP app may be downloaded and used free of charge, without the use of a subscription, but in order to use the full functionality of 2BAP a subscription must be purchased. By continuing to use 2BAP you agree to abide by these terms and conditions regardless of whether or not a subscription has been purchased.

1.3 By purchasing a subscription, you are granted a limited non-exclusive, non-transferable licence to use 2BAP, including any such features as are agreed by us with you in writing at the time of purchase.

1.4 You may use your subscription on no more than the number of tablet devices agreed by us with you in writing.

1.5 You may only use your subscription at the setting or settings explicitly agreed with us in writing. Schools or organisations that are part of chains, federations or similar collections or associations are treated for the purpose of this agreement as separate institutions. Each such organisation will require their own licence unless the contrary is explicitly agreed with us in writing.

1.6 The subscription fee shall be payable on or before the date of commencement of your subscription. Unless otherwise stated all prices quoted to you are exclusive of VAT or other sales tax and such tax must be paid by you where legally due. If any part of the subscription fee is unpaid, we reserve the right to suspend use of 2BAP.

1.7 You must make all payments due without any set-off, counterclaim or any other deduction.

1.8 You must maintain reasonable security measures to safeguard 2BAP from access or use by any unauthorised person, including ensuring that the PIN code feature is used to lock the 2BAP app on each Device, taking reasonable steps to maintain security of passwords and PIN codes and log-in information. You must promptly contact us by emailing [info@2simple.com](mailto:info@2simple.com) to request password changes or deactivation if you become aware that a Device has been lost or stolen, a user has left your employment, or that your security has been compromised.

1.9 You must retain the 2BAP app under your control and maintain a full and accurate record of the Devices on which the app is located and you agree that you will produce a copy of that record to 2Simple on request.

1.10 These terms and conditions (including any documents referred to within them) contain all the terms on which we provide 2BAP to you. They supersede any prior promises, representations, undertakings or implications made.

1.11 Where you are a private consumer, nothing in these terms and conditions shall detract from your statutory rights.

1.12 If 2Simple reasonably believes that your login is being used in any way which is not permitted by this Agreement, 2Simple reserves the right to cancel access rights immediately on giving notice to you and to block access from your login.

1.13 We may include your name in our list of customers made available to the public and subject to your prior written consent may include in our marketing materials a case study concerning your use of 2BAP.

1.14 If you are using the free version of 2BAP we do not undertake to retain any of your data. If you have paid for a subscription, we will allow you to have access to any of your data stored for a 30 day period following termination of your subscription. We reserve the right to permanently delete all such data after expiry of that 30 day period. It is therefore your responsibility to make back-ups of any data that you wish to preserve before the expiry of that period.

## 2. Ownership of Copyright and Intellectual Property Rights

2.1 The name 2Build a Profile and the 2BAP app and Web-Suite (including any images, designs, photographs, animations, video, audio, music and text incorporated into 2BAP) are owned by 2Simple and its partners and are protected by United Kingdom copyright laws and international treaty provisions.

2.2 You may not (without prior written permission from 2Simple):

2.2.1 Attempt to circumvent the copy protection in the 2BAP app or copy the 2BAP app.

2.2.3 reverse engineer, decompile, or disassemble the 2BAP app or anything on the Web-Suite.

2.3 We will defend any claim brought against you by a third party alleging that the use of 2BAP infringes a third party's intellectual property rights, and we will pay any costs and damages awarded provided that you give us prompt notice of any such claim, give us reasonable assistance in relation to it, give us sole authority to defend or settle the claim and take reasonable steps to mitigate any damage that is occurring in relation to any such claim. If costs are awarded in relation to the defence of such a claim we would benefit from any such costs award.

2.4 If in our reasonable opinion 2BAP is or may become the subject of an intellectual property claim, we shall be entitled to replace or modify 2BAP so that it becomes non-infringing, but is the equivalent in all material respects to its previous specification prior to modification.

2.5 We shall have no liability for any intellectual property claim arising from any use of 2BAP which is not in accordance with this agreement, including any modification of 2BAP by you or a third party, or from the use of any version other than the most recent version of 2BAP.

## 3 Warranties and Acknowledgements

3.1 You undertake to use 2BAP in compliance with all applicable laws and in a manner that does not infringe any third party rights.

3.2 2BAP may include certain features designed to assist you to comply with legal or regulatory requirements or guidelines including stage "objectives" and "outcomes". We may also provide general guidance on various topics including suggested policies. In doing so you acknowledge that you rely on such features or guidance at your own risk. It is your responsibility to satisfy yourself that 2BAP and your use of it complies with any legal or regulatory requirements or guidelines that apply to you and that 2BAP is otherwise suitable for your purposes.

3.3 You acknowledge that 2BAP has not been produced to meet your individual specifications and cannot be tested in advance in every possible operating combination and environment, and that it is not possible to produce software that is known to be error free in all circumstances.

3.4 You acknowledge that we will process personal data in accordance with our [Security and Privacy Policy](#).

3.5 2Simple will use its reasonable skill in making 2BAP available to you and in ensuring its continuing availability during your Subscription. However because of the nature of the Internet and computer software and hardware, errors and omissions do occur and 2Simple does not give any other warranties in respect of 2BAP and do not warrant that 2BAP will be available 100% of the time. Further, you should not take the accuracy of the information provided for granted and 2Simple makes no warranty that 2BAP is free from infection by viruses or anything else that has contaminating or destructive properties. All implied warranties are excluded from this Agreement to the extent that they may be excluded as a matter of law.

## 4 Limitation of Liability and Indemnities

4.1 2BAP is provided on an "as is" and "as available" basis, and to the maximum extent compatible with the law, without warranties or representations of any kind as to merchantability, non-infringement or fitness for any particular purpose.

4.2 2Simple will use its reasonable endeavours to resolve faults in 2BAP during the Subscription. You agree that your only recovery for damages that you incur, and your exclusive remedy, shall be limited to the direct damages you actually incur up to an amount equivalent to the fee actually paid or payable in relation to your use for the relevant term of 2BAP. Where you using the free version your only remedy will be to terminate your use of 2BAP.

4.3 To the maximum extent permitted by applicable law, in no event shall 2Simple be liable for any damages which arise out of the use or inability to use 2BAP (including, without limitation, damages for the loss of business profits, business interruptions, loss of business information, or other pecuniary loss), even if 2Simple has been advised of the possibility of such damages. In any event entire liability to you under this Agreement or with regard to 2BAP shall be limited to the amount actually paid for 2BAP in your most recent subscription fee payment.

4.4 In no event will 2Simple be liable for any economic losses, loss of goodwill or reputation, special indirect or consequential losses or damage to or loss of data.

4.5 2Simple shall have no liability of any kind of any loss or damage to the extent that they result from your breach of this agreement.

## 5 Personal Data

5.1 We will make backups of your data, but we do not guarantee that the backups will be made at sufficient regularity for your purposes. It is your responsibility to protect yourself against the risk of damage to or loss of data by making your own backups of the data whether by frequent use of the facility in 2BAP to create reports or otherwise.

5.2 The following provisions exist to ensure compliance with the Seventh Principle contained in Part II of Schedule 1 of the Data Protection Act 1998 ("the Seventh Principle"). In supplying us with personal data via 2BAP you will be considered to be a "Data Controller" within the meaning of the Data Protection Act, in processing such data, we will be considered to be a "Data Processor". In processing all such data:

5.2.1 We our servants and agents will take all reasonable necessary steps to comply with the Seventh Principle.

5.2.2 We will provide information to you as to our technical and organisational security measures governing the processing and storage of data to be carried out, and will continue to keep you updated in respect of any significant changes to such arrangements.

5.2.3 We will not transfer any of your data outside the European Economic Area, except at your request.

5.2.4 We shall only carry out those actions in respect of the personal data processed on your behalf as are expressly authorised by you.

5.2.5 We will not subcontract any of its rights or obligations under this agreement without your prior written consent.

5.2.6 Where we, with your consent subcontract any of our obligations under this agreement, we shall do so only by way of a written agreement with the subcontractor that imposes the same obligations in relation to the security of the processing on the subcontractor as are imposed on us under this agreement.

5.2.7 You hereby acknowledge and consent to the subcontracting of data processing by the Processor to 2 Eskimos Limited. who are the principal authors of the 2Build a Profile software. We warrant that such subcontracting is covered by a written agreement that complies with paragraph 5.2.6 above.

5.2.8 If you give us instructions that are, in our judgment incompatible with the proper running of our operations, we will be at liberty to refuse to continue to provide data processing services to you.

5.2.9 We agree that we shall maintain the personal data processed by us on behalf of you in confidence. In particular, subject to paragraph 5.2.10 below, we agree that, save with your the prior written consent we shall not disclose any personal data supplied us for or on behalf of you to any third party.

5.2.10 Nothing in this agreement shall prevent either party complying with any legal obligation imposed by a regulator or court.

5.2.11 Following termination of your subscription, the Processor shall at the direction of the Controller destroy all personal data unless prohibited from doing so by law.

5.3 You are responsible for the data you supply to us and shall ensure that it complies with all applicable laws and is not unlawful, false, misleading, abusive or offensive.

5.4 You acknowledge that 2BAP and the information it extracts are dependent partly on the accuracy of the data that you supply to us. For the avoidance of doubt, we are not responsible for checking the accuracy of the data you supply to us.

## 6 Privacy Policy and Cookies

The information that you provide about yourself to 2Simple will only be used by 2Simple in accordance with its [Security and Privacy Policy](#). We use cookies on the Web-Suite and by using 2BAP you consent to the use of such cookies, full details of how we use them are contained within our Security and Privacy Policy. Please read the Security and Privacy Policy carefully and if you have any questions please email [support@2Simple.com](mailto:support@2Simple.com).

## 7. Jurisdiction and miscellaneous

7.1 The English Courts will have exclusive jurisdiction over any claim arising from or related to your use of 2BAP. These terms of use are governed by English law. We may revise these terms of use at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we make as they are binding on you.

7.2 If any part of these terms are unlawful, void or unenforceable for any reason, such part shall to the extent required be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of these terms and shall not in any way affect any other circumstances or the validity or enforcement of these terms.

7.3 Save insofar as expressly provided in these terms, no third party may enforce any clause in these terms under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

This document last updated: 1<sup>st</sup> March 2016