

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (THIS “**AGREEMENT**”) GOVERNS CUSTOMER’S ACQUISITION AND USE OF SMARTLING SERVICES.

1. DEFINITIONS

“**Customer**” shall mean the entity, other than Smartling, that enters into this Agreement.

“**Customer Data**” shall mean all electronic data or information submitted by Customer to the Services.

“**Effective Date**” shall mean the date on which the parties hereto enter into an Order Form referencing this Agreement.

“**Non-Smartling Application**” shall mean a software application that is provided by Customer or a third party.

“**Order Form**” shall mean the ordering documents for Customer’s purchases of Services from Smartling that are entered into by the parties hereto from time to time. Each Order Form shall be governed by the terms of this Agreement.

“**Professional Services**” shall mean the integration, consulting, and similar services described in a Statement of Work.

“**Services**” shall mean the Professional Services and Software Services collectively.

“**Smartling**” shall mean Smartling, Inc., a Delaware corporation, having its principal place of business at 1375 Broadway, 14th Floor, New York, NY 10018.

“**Software Services**” shall mean software applications provided by Smartling.

“**Source Content**” shall mean Customer Data that is submitted by or for Customer to the Services and authorized for translation into one or more languages.

“**Statement of Work**” shall mean the document describing the scope and schedule of Professional Services to be performed by Smartling for Customer. Each Statement of Work shall be associated with an Order Form and shall be governed by the terms of this Agreement.

2. SMARTLING RESPONSIBILITIES

2.1. Provision of Software Services. Smartling will: (a) make the Software Services available to Customer pursuant to this Agreement and the applicable Order Forms; (b) provide standard support for the Software Services to Customer at no additional charge; and (c) make the Software Services available in accordance with Exhibit 1 attached hereto and made a part hereof.

2.2. Protection of the Customer Data. Smartling will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data.

2.3. Smartling Personnel. Smartling will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with its obligations under this Agreement, except as otherwise specified herein.

3. USE OF THE SOFTWARE SERVICES

3.1. Customer Responsibilities. Customer is responsible for all actions taken by Customer with the Software Services. Customer will: (a) be responsible for the accuracy, quality, and legality of the Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to or use of Software Services, and notify Smartling promptly of any such unauthorized access or use; and (c) use the Software Services only in accordance with applicable laws and government regulations.

3.2. Use Guidelines. Customer shall use the Software Services solely for its own business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or otherwise commercially exploit or make the Software Services available to any third party; (b) knowingly distribute via or store within the Software Services infringing or otherwise unlawful or tortious material, including material that violates third party privacy rights; (c) knowingly distribute via, upload to, or store within the Software Services any code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses; (d) knowingly interfere with or disrupt the integrity or performance of the Software Services or the data contained therein; (e) access the Software Services if Customer is Smartling's direct competitor, or for any competitive purposes, except with Smartling's prior written consent; or (f) attempt to gain unauthorized access to the Software Services or its related systems or networks.

3.3. Integration with Non-Smartling Applications. Customer may desire to use Non-Smartling Applications with the Software Services. To use such Non-Smartling Applications, Customer may be required to obtain access to Non-Smartling Applications from their providers, and may be required to grant Smartling access to Customer's account(s) on the Non-Smartling Applications. Any use by Customer of such Non-Smartling Applications, and any exchange of data between Customer and any Non-Smartling Application provider, is solely between Customer and the applicable Non-Smartling Application provider. Smartling does not warrant or support Non-Smartling Applications or their interoperability with the Software Services.

4. FEES & PAYMENT

4.1. Fees. Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form: (a) fees are based on Services purchased and not actual usage; (b) payment obligations are non-cancelable; fees paid are non-refundable; and (c) the quantity of Software Services purchased cannot be decreased during the relevant subscription term.

4.2. Professional Services Fees.

4.2.1. Fixed Price. If an Order Form provides for payment of Professional Services fees on a fixed price basis, Smartling will invoice Customer for work performed as set forth in such Order Form.

4.2.2. Time & Materials. If an Order Form provides for payment of Professional Services fees on a time and materials ("T&M") basis, the Professional Services shall be provided at the T&M rates as specified in such Order Form. On a T&M engagement, if an estimated total amount is stated in the applicable Order Form, that amount is solely a good faith estimate and not a guarantee that the Professional Services will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Smartling will continue to provide Professional Services on a T&M basis under the same rates and terms.

4.3. Expenses. Customer shall reimburse Smartling for reasonable travel and out-of-pocket expenses incurred in conjunction with the Services, provided Smartling has received Customer's prior written permission.

4.4. Invoicing and Payment. Except as otherwise provided, all fees are quoted and payable in United States dollars. If Customer provides credit card information to Smartling, Customer authorizes Smartling to charge such credit card for all Services listed in the Order Form and for any renewal subscription term(s) as set forth in Section 10.2. Such charges shall be made in accordance with the billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Smartling will invoice Customer in accordance with the relevant Order Form. Customer is responsible for providing complete and accurate billing and contact information to Smartling and notifying Smartling of any changes to such information.

4.5. Overdue Payments. Customer's failure to pay as set forth herein shall constitute a material breach of this Agreement. If any invoiced amount is not received by Smartling by the due date (except with respect to charges then under reasonable and good faith dispute), then without limiting Smartling's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), Smartling may, without limiting its other rights and remedies, suspend the Services to Customer until such amounts are paid in full. If such failure to pay has not been cured within 60 days of the due date, then upon written notice Smartling may terminate this Agreement and all outstanding Order Forms.

4.6. Taxes. Smartling's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Any Taxes assessed as a result of transactions governed by this Agreement shall be borne by the taxpayer designated by any applicable laws and government regulations and paid by such taxpayer in accordance therewith. If Smartling has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 4.6, Smartling will invoice Customer and Customer will pay that amount unless Customer provides Smartling with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.7. Future Functionality. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Smartling regarding future functionality or features.

5. PROPRIETARY RIGHTS & LICENSES

5.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Smartling and its licensors reserve all of its/their right, title, and interest in and to the Software Services, including all of its/their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Subject to the limited rights expressly granted hereunder, Customer and its licensors reserve all of its/their right, title, and interest in and to the Customer Data, including all of its/their related intellectual property rights. No rights are granted to Smartling hereunder other than as expressly set forth herein.

5.2. License by Smartling to Use Software Services. Smartling grants to Customer a worldwide, limited-term, non-exclusive license to use Software Services ordered by Customer pursuant to Order Forms, subject to those Order Forms, and this Agreement.

5.3. License by Customer to Host the Customer Data. Customer grants Smartling a worldwide, limited-term license to host, copy, transmit, and display the Customer Data solely as necessary for Smartling to provide the Services in accordance with this Agreement.

5.4. License by Customer to Use Feedback. Customer grants to Smartling a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer relating to the operation of the Services.

5.5. Publicity. While this Agreement is in effect, either party may include the name and logo of the other party in lists (including on its website) of customers or vendors in accordance with the other party's standard logo and/or trademark usage guidelines. Except as set forth herein, neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.

6. CONFIDENTIALITY

6.1. Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes the Customer Data; Smartling's Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party.

6.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care): (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (b) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

6.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. WARRANTIES & DISCLAIMERS

7.1. Mutual Warranties. Each party represents and warrants that: (a) it has the legal power to enter into this Agreement; and (b) that the signatory hereto has the authority to bind the applicable organization.

7.2. Customer Warranties. Customer represents and warrants that: (a) the Customer Data shall not infringe on any copyright, patent, trade secret, or other intellectual property or proprietary right held by any third party; and (b) Customer shall not use the Software Services in a manner that violates any international, federal, state, or local law, rule, or regulation.

7.3. Smartling Warranties.

7.3.1. Software Services. Smartling represents and warrants that: (a) the Software Services will perform materially in accordance with the user guide; and (b) Smartling will not materially decrease the functionality of the Software Services during a subscription term. For any breach of a warranty in this Section 7.3.1, Customer's exclusive remedies are those described in Sections 10.3 and 10.4.

7.3.2. Professional Services. Smartling represents and warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. Customer must report any deficiencies in the Professional Services to Smartling in writing within 90 days of performance of such Professional Services in order to receive warranty remedies. For any breach of the warranty in this Section 7.3.2, Customer's exclusive remedy, and Smartling's entire liability, shall be the re-performance of the Professional Services. If Smartling is unable to re-perform the Professional Services as warranted within 90 days of receipt of notice of breach, Customer shall be entitled to recover the fees paid to Smartling for the deficient Professional Services.

7.4. Disclaimer. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SMARTLING EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE OF THE SERVICES, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY SMARTLING. NOTWITHSTANDING THIS OR ANY OTHER PROVISION OF THIS AGREEMENT, THE SOFTWARE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY DURING ANY FREE TRIAL OR FREE SUBSCRIPTION.

8. INDEMNIFICATION

8.1. By Smartling. Smartling shall defend, indemnify, and hold Customer harmless against any loss, damage, or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively, "**Claims**") made or brought against Customer by a third party alleging that Customer's use of the Services within the scope of this Agreement infringes the intellectual property rights of such third party; *provided, however*, that Smartling shall have no such indemnification obligation to the extent such infringement: (a) relates to use of the Services in combination with other software, hardware, data products, processes, or materials not provided by Smartling and the infringement would not have occurred but for the combination; (b) arises from or relates to modifications to the Services not made or authorized by Smartling; or (c) where Customer continues the activity or use constituting or contributing to the infringement after notification thereof by Smartling.

8.2. By Customer. Customer shall defend, indemnify, and hold Smartling harmless against any loss, damage, or costs (including reasonable attorneys' fees) incurred in connection with a Claim made or brought against Smartling by a third party alleging that: (a) Customer has used the Services other than in compliance with the terms of use set forth in this Agreement; (b) Customer Data, and/or any materials provided to Smartling necessary to perform the Services, infringe the intellectual property rights of a third party; or (c) Smartling's use, in accordance with this Agreement, of any Customer Data has otherwise harmed a third party.

8.3. Procedure. As an express condition to the indemnifying party's obligation under this Section 8, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought; and (b) provide the indemnifying party with all non-monetary assistance, information, and authority reasonably required for the defense and settlement of such Claim. The indemnifying party may select counsel for defense of the Claim and direct the course of any litigation or other disputed proceedings concerning the Claim. The indemnified party may select its own counsel and direct its own defense of a Claim if it chooses to do so, but it must bear the costs of its own counsel and any activities in any disputed proceeding conducted by counsel of its choosing. The indemnifying party may settle any Claim, to the extent it seeks a money payment, with or without the consent of the indemnified party. The indemnifying party must obtain the indemnified party's consent to any settlement to the extent it consents to injunctive relief or contains contract terms governing future activities that would materially affect the indemnified party's business or interests, said consent not to be unreasonably withheld, conditioned, or delayed.

9. LIMITATIONS

9.1. Limitation of Liability. NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE FEES FOR SOFTWARE SERVICES INCURRED BY CUSTOMER HEREUNDER IN THE 6 MONTHS PRECEDING THE INITIAL ACT OR OMISSION GIVING RISE TO SUCH LIABILITY, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES FOR SOFTWARE SERVICES PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3. Time to File Claim. NO CLAIM MAY BE BROUGHT BY A PARTY UNDER THIS AGREEMENT MORE THAN 12 MONTHS AFTER THE INITIAL ACT OR OMISSION GIVING RISE TO SUCH CLAIM.

10. TERM & TERMINATION

10.1. Term of Agreement. This Agreement commences on the Effective Date and continues until the expiration or termination of all subscriptions hereunder.

10.2. Term of Purchased Subscriptions. The term of the subscription for a Service shall be as specified in the applicable Order Form for such Service. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other written notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless Smartling has given Customer written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

10.3. Termination. A party may terminate this Agreement: (a) 30 days after written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

10.4. Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 10.3, Smartling will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Smartling in accordance with Section 10.3, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve Customer of its obligation to pay any fees payable to Smartling for the period prior to the effective date of termination.

10.5. Surviving Provisions. Sections 4, 5.1, 5.4, 5.5, 6, 7, 8, 9, 10.4, and 11 will survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

11.1. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) hand delivery; (b) the second business day after mailing; or (c) the second business day after sending by confirmed facsimile. Notices to Smartling shall be addressed to the attention of its General Counsel. Notices to Customer shall be addressed to the billing contact designated by Customer.

11.2. Governing Law. This Agreement shall be governed exclusively by the internal laws of the State of New York, without regard to its conflicts of laws rules. Except as otherwise provided, any dispute arising out of or relating to this Agreement shall be settled by binding arbitration in New York, New York, under the rules of the American Arbitration Association by 3 arbitrators appointed in accordance with such rules. Each party consents to the exclusive jurisdiction of the state and federal courts located in New York, New York to adjudicate any action arising out of or related to this Agreement. Each party also waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. All actions must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. Customer agrees that, by entering into this Agreement, the parties are each waiving the right to a trial by jury or to participate in a class action. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11.3. Entire Agreement. This Agreement, including all Addenda, Order Forms, and Statements of Work, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Addendum, Order Form, or Statement of Work, the terms of this Agreement shall prevail unless expressly stated otherwise in such Addendum, Order Form, or Statement of Work. Notwithstanding any language to the contrary herein, no terms and conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms and Statements of Work) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. The language used in this Agreement shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either party shall apply to rights granted herein or to any term or condition of this Agreement.

11.4. Assignment. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Smartling's prior written consent. This Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

11.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

11.6. Third-Party Beneficiaries. There are no other third-party beneficiaries under this Agreement.

11.7. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

EXHIBIT 1

SERVICE LEVEL AGREEMENT

1. DEFINITIONS

“**Monthly Uptime**” is calculated by subtracting from 100% the percentage of minutes during the calendar month in which a particular Software Service was unavailable. Monthly Uptime measurements exclude unavailability resulting directly or indirectly from: (a) planned downtime (for which Smartling shall make good faith efforts to give at least 48 hours electronic notice); and (b) any unavailability caused by circumstances beyond Smartling’s reasonable control, including without limitation, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Smartling employees), Internet service provider failure or delay, Non-Smartling Application, denial of service attack, or errors or omissions in the Source Content.

“**Service Commitment**” is set forth on the Order Form and applies separately to each Software Service.

“**Service Credit**” is a financial credit, calculated as set forth in Section 2.2.

2. SERVICE CREDITS

2.1. Service Credit Eligibility. In the event that the Monthly Uptime for a Software Service is less than the Service Commitment, and Customer has an active subscription to that Software Service, Customer will be eligible to receive a Service Credit as described in this Section 2.

2.2. Calculation of Service Credits. Service Credits are calculated as the Service Commitment less the Monthly Uptime, multiplied by the total charges paid by Customer (excluding one-time payments such as set-up payments) for the Software Service that was unavailable for the calendar month in which the unavailability occurred, up to a maximum of 20% of said charges.

2.3. Service Credit Requests. To receive a Service Credit, Customer must submit a claim by emailing servicecredit@smartling.com. Smartling must receive the credit request within 30 days after the calendar month in which the incident occurred and must include the words “SLA Credit Request” in the subject line. Customer’s failure to provide the request as required in this Section 2.3 will disqualify Customer from receiving a Service Credit.

2.4. Application of Service Credits. Smartling will apply any Service Credits against future Software Service payments otherwise due from Customer. If no future Software Service payments are due from Customer, Smartling will refund Customer in the amount of the Service Credits. Except as set forth herein, Service Credits will not entitle Customer to any refund or other payment from Smartling. Unless otherwise provided in the Agreement, Customer’s sole and exclusive remedy for any unavailability, non-performance, or other failure by Smartling to provide a Software Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this Section 2.