

Compatible w/ AWS Marketplace**1. DEFINITIONS**

"Confidential Information" means all information disclosed by a party (the **"Disclosing Party"**) to the other party (the **"Receiving Party"**), whether orally, in writing, or otherwise, 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.

"Effective Date" shall mean the date of the Customer's subscription to the Service through the AWS Marketplace or the date set forth in the applicable Service Schedule, whichever is earlier.

"Language Services" shall mean language translation and related services as may be described in a Service Schedule.

"Neural Machine Translation Hub" or "NMT Hub" shall mean machine-generated language translation and related services as may be described in a Service Schedule.

"Customer Data" means the information provided to Smartling by or on behalf of Customer in connection herewith.

"Customer Personal Data" shall mean personal data, personally identifiable information, or other similar information belonging to Customer.

"Professional Services" shall mean integration, consulting, and similar services as may be described in a Service Schedule.

"Services" shall mean the Professional Services, Language Services, Software Services, and the NMT Hub, collectively.

"Software Services" shall mean software applications provided by Smartling as may be described in a Service Schedule.

"Service Schedule" or "Order Form" shall mean the ordering document for Customer's purchase of Smartling Services, directly or indirectly, from Smartling, including via the AWS Marketplace.

2. SMARTLING RESPONSIBILITIES

2.1. Provision of Services. Smartling will: (a) make the Services available to Customer pursuant to this Agreement and the applicable Service Schedule; and (b) provide standard support for the Software Services to Customer as described in the Service Schedule attached hereto.

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. The parties will comply with their obligations under any data protection addenda or data processing agreements executed in connection with this Agreement.

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.

2.4. Compliance with Law. Smartling represents and warrants that its performance of its obligations hereunder will comply with applicable law.

3. FEES & PAYMENT

3.1. Fees. Customer will pay all fees as specified in Service Schedules. Except as otherwise specified herein or in a Service Schedule: (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 Services purchased cannot be decreased during a relevant subscription term. Subject to Section 3.4 below and without limitation, Customer acknowledges and agrees that its obligation to pay fees under this Section 3.1 is a material element of the Agreement.

3.2. 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.

3.3. Invoicing and Payment. Subscription Fees for the Smartling Services will be invoiced either (i) via AWS Marketplace by the applicable AWS entity in accordance with the payment terms as agreed between Customer and the applicable AWS Contracting Party, or (ii) directly by Smartling in accordance with the payment terms outlined in the relevant Service Schedule. All fees are quoted and payable in United States dollars unless otherwise specified by AWS or Smartling. Smartling may share information with AWS related to Customer's use and consumption of the Smartling Services for account management and billing purposes. Customer is responsible for providing complete and accurate billing and contact information to Smartling and notifying Smartling of any changes to such information.

3.4. Overdue Payments. 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, in coordination with AWS (if applicable), suspend any or all 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, Smartling may, upon written notice, terminate this Agreement and all outstanding Service Schedules for Customer's material breach.

3.5. Taxes. Smartling's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, assessable by any jurisdiction (collectively, "**Taxes**") except as set forth in this Section. 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. Notwithstanding the foregoing, if Smartling has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, 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.

3.6. Future Functionality. Customer acknowledges and agrees that, unless expressly provided for on a Service Schedule, 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.

4. RIGHTS AND LICENSES

4.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder or in a Service Schedule, Smartling and its licensors reserve all of its right, title, and interest in and to the Services and all related documentation, know-how, specifications, developments, diagrams, and other related intellectual property. No rights are granted to Customer hereunder other than as expressly set forth herein. Subject to the limited rights expressly granted hereunder or in a Service Schedule, Customer and its licensors reserve all of their right, title, and interest in and to the Customer Data, including all related intellectual property rights. No rights are granted to Smartling hereunder other than as expressly set forth herein or in a Service Schedule.

4.2. License 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. No such feedback shall entitle Customer to any intellectual property right or interest in the Service whatsoever.

4.3. Publicity. While this Agreement is in effect, either party may include the name and logo of the other party in lists or other reasonable public-facing materials (including on its website) describing customers or vendors. Either party may revoke its consent to the other party to so use its name or logo on written notice (email to suffice). 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.

5. CONFIDENTIALITY

5.1. Nature of Confidential Information. Confidential Information of each party includes the terms and conditions of this Agreement and all Service Schedules (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes. Notwithstanding the foregoing, Confidential Information shall 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.

5.2. 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.

5.3. Protection of Personal Data. For the avoidance of doubt, Personal Data, Personal Information, or Protected Health Information, as applicable and as such terms may be defined in addenda hereto, shall constitute Confidential Information hereunder, whether or not sent intentionally by the Disclosing Party, and the parties' obligations to protect such information under Section 5.2 above shall be reasonable considering the particular nature of such information.

5.4. Compelled Disclosure. The Receiving Party may disclose Confidential Information or Personal Data 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.

5.5. Remedies. The parties acknowledge and agree a breach or threatened breach by Receiving Party of any of its obligations under this Section 5 would give rise to irreparable harm to Disclosing Party for which monetary damages would not be an adequate remedy. Each party therefore agrees that in the event of a breach or a threatened breach by Receiving Party of such obligations, Disclosing Party shall be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other equitable relief that may be available from and deemed appropriate by a court of competent jurisdiction, and that such remedies will be available without the necessity to post bond or other of surety. For the avoidance of doubt, such remedies shall be in addition to and not exclusive of any and all other rights and remedies that may be available under law.

6. INDEMNIFICATION

6.1. By Smartling. Smartling shall defend, indemnify, and hold Customer, its affiliates, its directors, and its officers 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 Smartling's modifications to any Service made to comply with specifications provided by Customer; (c) arises from or relates to modifications to the Services not made or authorized by Smartling; or (d) continues after notification of an infringing activity or use by Smartling and provision by Smartling of a reasonable workaround.

6.2. By Customer. Customer shall defend, indemnify, and hold Smartling, its affiliates, its directors, and its officers 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 Data, and any materials provided to Smartling in relation to performance of the Services, infringe the intellectual property rights of a third party; (b) Customer Data, and any materials provided to Smartling in relation to performance of the Services, constituted or resulted in an improper or unlawful dissemination or release of Personal Data, provided that Customer's obligation in such case shall be limited only to the extent that such dissemination or release did not result from Smartling's own negligence or willful misconduct; or (c) Smartling's use, in accordance with this Agreement, of any Customer Data has otherwise harmed a third party.

6.3. Procedure. As an express condition to the indemnifying party's obligation under this Section 6, 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 the settlement requires a payment of money that the indemnifying party agrees to provide, with or without the consent of the indemnified party. The indemnifying party must obtain the indemnified party's consent, such consent not to be unreasonably withheld, conditioned or delayed, to any settlement to the extent (i) it consents to injunctive or any other equitable relief, (ii) makes any admission of or agrees to any act, omission, statement of culpability, or other fact concerning the indemnified party, or (iii) contains terms governing future activities that would materially affect the indemnified party's business or interests.

7. LIMITATIONS

7.1. Limitation of Liability. NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE TOTAL AMOUNT OF FEES FOR SERVICES PAYABLE BY CUSTOMER FOR SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE ACT OR OMISSION GIVING RISE TO THE APPLICABLE LIABILITY. NOTWITHSTANDING THE FOREGOING, NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATING TO ITS OBLIGATIONS UNDER SECTIONS 5, NOR EITHER PARTY'S OBLIGATIONS UNDER SECTION 6, OF THIS MASTER SERVICES AGREEMENT SHALL EXCEED THREE TIMES (3X) THE TOTAL AMOUNT OF FEES FOR SERVICES PAYABLE BY CUSTOMER FOR SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE ACT OR OMISSION GIVING RISE TO THE APPLICABLE LIABILITY. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

7.2. 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. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY DAMAGES ARISING FROM A PARTY'S BREACH OF SECTION 5 ABOVE SHALL BE CONSIDERED DIRECT DAMAGES.

8. TERM & TERMINATION

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

8.2. Termination. A party may terminate this Agreement and all connected Service Schedules: (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) immediately on written notice 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.

8.3. Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 8.2, or for Smartling's breach of an applicable representation or warranty, Smartling will refund Customer any prepaid fees covering the remainder of the term of all Service Schedules after the effective date of termination. If this Agreement is terminated by Smartling in accordance with Section 8.2, Customer will pay any unpaid fees covering the remainder of the term of all Service Schedules. 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.

8.4. Surviving Provisions. Sections 2.2, 3, 4.2, 5, 7, 8, and 9 of this Master Services Agreement, together with any term of any Service Schedule which by its nature would reasonably be understood to survive termination thereof, will survive any termination or expiration of this Agreement.

8.5. Public Offer. In the event that Customer purchases Smartling Services via a Public Offer on AWS Marketplace, Smartling reserves the right to reject a Customer's purchase within thirty-six (36) hours of the purchase being made. If Customer purchases Smartling Services via a Public Offer, Smartling may terminate these terms for convenience at any time for any reason without liability to Customer.

9. GENERAL PROVISIONS

9.1. Interpretation. The Definitions set forth in Section 1 of this Master Services Agreement shall apply to all documents referencing and governed by this Agreement unless expressly superseded by such document. Headings are for organization purposes only. 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.

9.2. 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; (c) the second business day after sending by confirmed facsimile; or (d) receipt if by email. Notices to Smartling shall be addressed to the attention of its Legal Department. Notices to Customer shall be addressed to the billing contact designated by Customer unless otherwise provided in an Service Schedule.

9.2. Governing Law; Dispute Resolution. This Agreement shall be governed exclusively by the internal laws of the State of New York, without regard to its conflicts of laws rules. Any dispute arising out of or relating to this Agreement shall be settled by binding arbitration in New York, New York, United States, under the rules of the American Arbitration Association by a sole arbitrator appointed in accordance with such rules, and conducted in accordance with such rules' Expedited Procedures. Except as otherwise provided, each party consents to the non-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 agrees that, by entering into this Agreement, each party is waiving the right to a trial by jury or to participate in a class action in connection herewith. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.3. Entire Agreement; Order of Authority. This Agreement, including all addenda, exhibits, and Service Schedules, 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 Master Services Agreement and any addendum or Service Schedule, the terms contained in the body of this Master Services Agreement shall prevail unless expressly stated otherwise in such addendum or Service Schedule. Notwithstanding any language to the contrary therein, no terms or conditions in any Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms and conditions shall be void.

9.4. Assignment; Subcontractors. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, provided that each party may assign its rights and obligations hereunder on notice without such consent to a successor entity in the event of a bona fide: merger, acquisition, reorganization, change in control, or sale of all or substantially all of its assets. Any purported assignment of this Agreement or any part thereof not in accordance with the foregoing shall be void. This Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns. Customer understands and agrees that Smartling may utilize subcontractors to perform certain elements of the Services. Smartling shall provide a list of any subcontractors providing Services hereunder through the Software Services.

9.5. 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.

9.6. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement except where expressly provided.

9.7. 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.

9.8. 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. In such a case, to the extent legally permitted and reasonably possible under the circumstances, the nullified provision shall be deemed replaced by the provision that comes closest to expressing the intention of the parties as expressed in such nullified provision.

9.9. Third Party Sharing. Customer acknowledges and agrees that AWS is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises, or commitments on behalf of Smartling or in any way concerning the Smartling Services.

