

# Terms & Conditions

## About This Document

Last Updated January 27, 2011

**IMPORTANT – READ CAREFULLY.** This Translation Services Agreement (this “Agreement”) is a legal agreement between you (“Client”) and Smartling, Inc. (“Supplier”) for services identified below (the “Services”).

If you do not agree to the terms of this Agreement, Supplier is unwilling to provide the Services to you. In such event, you may not use or access the Services.

## 1. Definitions

As used in this Agreement, the terms set forth in this Section 1, and any term defined in the body of this Agreement, will have the meanings ascribed thereto. Unless otherwise specified, words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated and references to the whole include the part; and in each case vice versa.

“Agent” shall mean any human or electronic actor, other than employees on Supplier’s payroll, that Supplier has or plans to have act, bring about, modify, affect, or transact Supplier’s obligations under this Agreement.

“Client Data” means: (i) all data, information, text, visual or graphic representations and other materials in any medium or electronic format, tangible or otherwise that are located on the Client Website and that are used, copied, stored, transmitted, processed or displayed by the Supplier or Subcontractors in connection with the provision of the Services and the performance of the Supplier’s obligations under this Agreement; (ii) the Source Content, and (ii) the Translated Content for which Client has paid all fees charged by Supplier or with respect to which Client is disputing payment in good faith.

“Client’s Designees” means any third party that Client permits to have access to the Client Website and Translated Websites.

“Client Website” means the Client’s website identified by Client pursuant to Supplier’s instructions that is to be translated pursuant to this Agreement and that is made available by Client to Client’s Designees.

“Community Translation Services” shall have the meaning set forth on Supplier’s website.

“Confidential Information” means (i) the source code, object code, and business methodology related to the Services and its components and (ii) all information marked as confidential or the like, or which, from the circumstances, should be treated as confidential by the receiving party.

Confidential Information does not include information which (a) is known by the receiving party at the time of disclosure free of any obligation to keep it confidential, (b) is or becomes publicly available through authorized disclosure by the owner of such information, (c) is rightfully obtained by the receiving party from a third party who has no obligation to maintain it in confidence, (d) is independently developed by employees or agents of the receiving party without reference to or use of the Confidential Information of the other party, (e) is disclosed by the receiving party pursuant to written permission from the disclosing party or (f) is required to be disclosed by the receiving party by legal process.

“Enhancement” means any change to the Services, including any update, upgrade, alteration, minor modification, error-fix, correction or revision as well as any release that includes substantial and material additional or new functionality, or major modifications or revisions, and any documentation pertaining thereto.

“Failure” means a failure of the Services, or any portion thereof, to conform to, operate, function or perform in accordance with the applicable representations, warranties and covenants set forth herein.

“Intellectual Property Rights” means all rights in inventions, patents, trademarks, service marks, trade names, rights in designs, copyrights, rights in know-how, moral rights, rights in confidential information and trade secrets, rights in databases, compilation rights and topography rights and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world (whether or not any of these is registered and including applications for registration of any of the same).

“Licensed Software” shall have the meaning set forth in Section 2.8.

“Machine Translation Services” shall have the meaning set forth on Supplier’s website.

“Original Language” means the predominant language of content found on the Client Website.

“Page View” means a request to load a single page of a Translated Website via an HTTP GET or POST request, including AJAX requests.

“Professional Translation Services” shall have the meaning set forth on the Supplier’s website.

“Service Information” means Supplier’s standard documentation relating to the use of the Services, as such documentation is updated from time to time together with any other Supplier materials.

“Services” means the services provided Supplier pursuant to this Agreement.

“Source Content” means a phrase or phrases of textual content found on the Client Website, in the Original Language, and identified for translation pursuant to section 2.5.3.

“Subcontractor” means a third party in a contractual relationship with the Supplier providing certain services which are material and necessary to the delivery of the Services.

“Target Language” means a language or language dialect, provided by Client pursuant to Supplier’s instructions, for which Supplier will translate Source Content into Translated Content and provide a corresponding Translated Website.

“Translated Content” means a phrase or phrases of textual content that has been translated from Source Content into a Target Language.

“Translated Website” means a hosted, mirrored version of the Client Website for a particular Target Language, such that some or all of the Source Content is replaced by corresponding content that has been translated into that Target Language.

“Translation Fees” means the fees for the Professional Translation Services and Machine Translation Services as specified by the Supplier and agreed to by the Client.

## 2. Service

**2.1.** Translated Websites. Supplier shall provide and make available Translated Websites to or for the benefit of Client and Client’s Designees.

**2.2.** Automatic Change Management. The Services provide a centralized method for automatically collecting new and modified Source Content on an ongoing basis. Any new or modified Source Content that is detected, including but not limited to all Source Content on the Client Website when the Services are initiated as well as any Source Content modifications or additions made to the Client Website during the term of this Agreement, will be translated pursuant to the terms of this Agreement. The Supplier shall determine in its reasonable discretion whether Source Content is new or modified.

**2.3. Equipment Requirements.** Supplier will be solely responsible, at Supplier's expense, for providing all equipment, hardware, software and other resources necessary for Supplier's provision of the Services. Client is solely responsible, at Client's expense, for providing all equipment, hardware, software, and other resources necessary for Client's provisions of the Client Website.

**2.4. Maintenance and Support.** Supplier shall maintain the Services (including all of its components) so that they operate, function, and perform at all times in accordance with this Agreement. As part of the maintenance service, Supplier may provide Client with access to and use of certain Enhancements developed by Supplier when and as each such Enhancement is made commercially available by Supplier. However, where the provision of any Enhancements or other maintenance services requires Services downtime or will affect Client's access to or operability of the Services, Supplier will give Client not less than two (2) days prior written notice of such requirement for downtime; for security issues or urgent changes, Supplier will provide not less than twenty-four (24) hours notice, when possible. Supplier shall provide all remedial maintenance services necessary to promptly resolve any Failures. Supplier shall provide a single point of contact to Client for any problems or questions concerning the use and functions of the Services.

**2.5. Obligations of Client.** As a condition to providing the Services for a Client Website, Client shall:

**2.5.1.** Create (including but not limited to obtaining the right to use and maintaining such right) or modify the Client's domain name system ("DNS") entry for each Target Language to direct Client's Designees to the corresponding Translated Website via the internet protocol address provided by Supplier.

**2.5.2.** Ensure the Client Website is and remains operational and accessible through the Internet, and ensure the Client Website is and remains in well-formed HTML format suitable for use with the Services, as specified by Supplier. Client shall be solely responsible for the integrity, accuracy and content of the Client Website.

**2.5.3.** Identify, pursuant to the instructions provided by the Supplier ("Integration Instructions"), content on each Client Website to be translated and the method (Professional Translation Services, Community Translation Services or Machine Translation Services) of translating such items.

**2.5.4.** Purchase and maintain appropriate SSL certificate(s), pursuant to the instructions provided by the Supplier, for each Translated Website. Supplier will install the SSL certificate(s) in order to be used by the Services.

**2.6. Content not Translated.** The following content will appear on the Translated Website unchanged from the manner in which it appears on the Client Website:

**2.6.1.** Content that is not included by the Client, or excluded by the Client, pursuant to the Integration Instructions.

**2.6.2.** Text contained within and as a part of graphic images on the Client Website, unless Client makes the election to include such text pursuant to the Integration Instructions.

**2.6.3.** Embedded multimedia files referenced within the Client Website's HTML including, but not limited to, video and Flash animations, unless Client makes the election to include such files pursuant to the Integration Instructions.

**2.6.4.** Downloadable binary files referenced within the Client Website's HTML including, but not limited to, Microsoft Office files and Adobe Acrobat files, unless Client makes the election to include them pursuant to the Integration Instructions.

**2.7.** Business Continuity. In providing the Services, the Supplier will have in place appropriate backup, disaster recovery and business continuity measures in accordance with reasonable commercial standards. Notwithstanding the foregoing, the Supplier will not provide back-up, disaster recovery and business continuity services to Customer for the Client Data or the provisioning of the Client Website.

**2.8.** Software Licenses. Subject to the terms and conditions of this Agreement, Supplier hereby grants to Client and Client's Designees during the entire term of this Agreement a non-exclusive world-wide right and license to access and use the Services over the Internet including related software as described in the this Agreement ("Licensed Software") for Client's purposes.

## 3. Fees

Client will pay to Supplier the appropriate fees as specified by the Supplier and agreed to by the Client as compensation for provision of the Services.

## 4. Confidentiality

Each party will keep in confidence all Confidential Information of the other party and will not directly or indirectly disclose to any third party or use for any purpose other than the performance of its obligations under this Agreement any Confidential Information it receives from the other party. Each party will use reasonable care to protect the other party's Confidential Information, but in no event less than the same degree of care it would employ with respect to its own information of like character. Supplier agrees to prohibit access to Client's Confidential Information to any Subcontractor or Agent who has not in advance agreed to confidentiality terms and conditions substantially conforming to those in this Section 4.

## 5. Representations and Warranties

**5.1.** Organizational Representations. Each party represents and warrants that: (i) it is duly organized and validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization; (ii) it has the power and authority to fully perform hereunder; and (iii)

the Agreement has been duly authorized for execution.

**5.2. Supplier Representations.** Supplier represents and warrants that during the term of this Agreement, the Services will operate, function and perform in accordance with this Agreement and the Service Information. If the Services or any portion thereof fails to operate in accordance with this Agreement, Supplier will promptly correct any such Failure.

**5.3. Supplier Property.** Supplier is the owner of all right, title and interest in and to the Supplier trademarks, Supplier Confidential Information, the Services, Licensed Software, Enhancements and the Service Information or has the right to use the same.

**5.4. Client Representation.** Client represents and warrants that Client is the owner of all right, title in and to the Client Data, or has the right to use the Client Data for the purposes set forth in this Agreement.

## 6. Subcontractors

Supplier may subcontract specific obligations of Supplier hereunder. Personnel used or supplied by Supplier to perform the work hereunder are employees or Agents of Supplier. Under no circumstances are such personnel to be considered employees or agents of Client. Supplier will remain responsible for performance by its Agents and Subcontractors (and all acts and omissions in connection therewith) to the same extent as for Supplier and its employees. Any references to "Supplier personnel" or similar language in this Agreement will be deemed to include such Agents and Subcontractors and all Supplier employees.

## 7. Ownership

**7.1.** Client acquires only the right to use and access the Services set forth in this Agreement and does not acquire title or any ownership rights to Licensed Software. Client agrees not to reverse-engineer the Licensed Software. Client agrees not to remove any copyright notices and other proprietary legends appearing on Licensed Software and Supplier's proprietary material.

**7.2.** All Intellectual Property Rights in the Client Data shall be owned by Client.

**7.3.** Subject to the terms and conditions of this Agreement and while it remains in effect, Client grants to Supplier the non-exclusive, world-wide right to use, copy, store, transmit, process and display Client Data and other portions or the entirety of the Client Website solely for the purposes of this Agreement. This license shall terminate automatically upon expiration or any termination of this Agreement.

**7.4.** Within five (5) business days of Client's request, and with reasonable frequency, Supplier shall provide files containing the Translated Content (for which Client has paid all fees as specified in herein or with respect to which Client is disputing payment in good faith) to Client in the industry

standard .tmx format. Notwithstanding any other provisions of this Agreement, because the Supplier provides Machine Translation Services, in part, through the use of third party products and services, Client shall have an exclusive license to use the Translated Content created by the Machine Translation Services for the purpose of displaying it on the appropriate Translated Website, but has no other ownership rights thereto. As a result, any .tmx file provided by Machine Translation Services shall not include such Translated Content.

## 8. Limitation of Liability

**8.1.** Disclaimer of Warranties; Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SUPPLIER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SOFTWARE SERVICES, PROFESSIONAL TRANSLATION SERVICES, COMMUNITY TRANSLATION SERVICES AND MACHINE TRANSLATION SERVICES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CLIENT ACKNOWLEDGES THAT SUPPLIER DOES NOT WARRANT ACCESS TO THE TRANSLATED WEBSITES AND TRANSLATED CONTENT WILL BE UNINTERRUPTED, WITHOUT DEFECT AND ERROR, ABSOLUTELY SECURE, OR WITHOUT INFILTRATION OR COMPROMISE OF SECURITY SYSTEMS.

**8.2.** Third-Party Hardware, Software and Other Materials. Supplier will have no liability to Client, arising from or relating to (and does make any express or implied warranties with regard to) any hardware, software or materials supplied to Client other than pursuant to this Agreement (“Third-Party Materials”), including, but not limited to, the selection thereof or failure of such Third-Party Materials to perform in accordance with specifications, or any defects therein.

**8.3.** No Special Damages. Neither party shall be liable under this Agreement for any indirect, special, incidental, exemplary or consequential damages, including, without limitation, compensatory damages for loss of present or prospective profits or revenues, loss of actual or anticipated royalties or other compensation, with respect to sales or anticipated sales or expenditures, investments or commitments, lost business opportunities, of substitute services, loss of records or data, irrespective of the form of action and irrespective of whether Supplier has been informed of the possibility of such damages, in connection with the establishment, development or maintenance of the relationship created by this Agreement or in connection with the performance of obligations hereunder.

**8.4.** Client Indemnity. Client hereby indemnifies and agrees to protect, defend, save and hold Supplier, its officers, directors, employees, agents, representatives and vendors harmless from and against any and all claims, losses, damages, liabilities and expenses of whatever nature (including attorney’s fees), that are incurred or asserted by any party as a result of the Services.

**8.5. Maximum Liability.** In no event will Supplier's maximum aggregate liability for damages, arising out of or related to this Agreement, exceed an amount equal to the fees paid by Client to Supplier during the six (6) months prior to the event allegedly giving rise to the claim, even if such limited remedy is found to have failed of its essential purpose.

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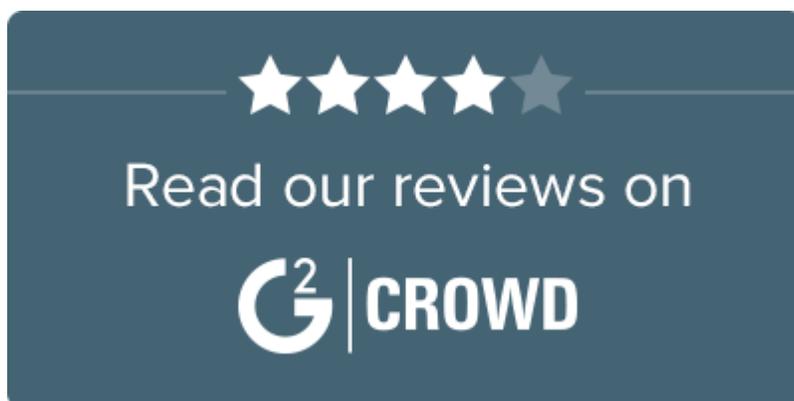
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