

## Master Subscription Agreement SMARTASSISTANT platform

### 1. OBJECT OF THE AGREEMENT

- 1.1. The object of this Master Subscription Agreement ("**Agreement**") is your acquisition and use of our Services as defined in this Agreement. We deliver our services solely under the conditions defined in this Agreement which form an integral part of every purchase by you even without express reference thereto. Any provisions which amend or alter this Agreement shall be valid only if they have been expressly recognized in the Order Form in writing.
- 1.2. The Agreement will become effective either by activating our Services via an Order Form on our website or by execution of an Order Form by both parties.
- 1.3. This Agreement was last updated on August 22<sup>nd</sup>, 2012. We may unilaterally change the contents of the Agreement and its Annexes at any time. Any modifications of the provisions of the Agreement will be sent to You. Upon receipt, they shall become effective unless You are objecting in writing within four weeks after receipt. In the case of an objection, the original Agreement shall remain unaffected until terminated by either Party.

### 2. DEFINITIONS

"**Advisor Visits**" means the number of End User visits triggered by all your Product Advisors based on our Services within one subscription month. Advisor Visits are counted per Product Advisor and per End User within one session (of 30 minutes) independent on how often the End User enters and re-enters one and the same Product Advisor.

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with one of the parties of this Agreement. "Control", means direct or indirect ownership or control of more than 50% of the voting interest's one of the parties of this agreement or a comparable economical influence on such company.

"**Business day**" means any day except Saturday, Sunday or a public holiday in Austria.

"**Business hours**" between 9:00 am and 6:00 pm (CET) on Business Days.

"**Business Users**" means individuals who are authorized to use the Services and who have been supplied user identifications and passwords by You. Business Users may include but are not limited to your employees, consultants, agents, and contractual partners.

"**End Users**" means individuals who use Product Advisors on your website, online- or mobile shop and/or an Application.

"**Malicious Code**" means any harmful or malicious code, files, scripts, agents or programs such as viruses, trojan horses or similar programs or measures..

"**Non-Smart Information Systems Applications**" means online applications and offline software products which interoperate with our Services but are provided by third parties.

"**Order Form**" means the document or web form for placing orders under this Agreement. By submitting an Order Form by You or Your Affiliates, You and respectively Your Affiliates are directly bound by its terms. Such Order Form shall be an integral part of the Agreement.

"**Product advisor**" refers to a web-based interaction dialogue which is created by You or Your Affiliates for a specific product or service domain (e.g. Notebooks, TVs, Dresses, Shoes, Hotels or Software) based on the **SMARTASSISTANT** platform (as defined in the User Guide) which can be integrated into your website, online- or mobile shop and/or an application.

"**Purchased Services**" means Services which are specified by You or your Affiliates in the Order Form.

"**Services**" means the **SMARTASSISTANT** platform which enables You and Your Affiliates to create and edit Product Advisors based on the **SMARTASSISTANT** technology. The Services are made available online via the link at <http://www.smart-infosys.com> and described in the User Guide in Detail.

"**User Guide**" means the online User Guide for the use of the Services under this Agreement enclosed to this Agreement in Annex 1 and/or available via login at <http://www.smart-infosys.com>.

"**We**," "**Us**" or "**Our**" refers to Smart Information Systems GmbH, Graumanngasse 7, 1150 Wien, AUSTRIA, Europe.

"**You**" or "**Your**" means the company or other legal entity for which You are accepting this Agreement, and Affiliates of that company or entity.

"**Your Data**" means all data or information submitted by You.

### 3. FREE TRIAL

**3.1.** Notwithstanding the provisions under Section 2, you declare that you will test Our Services during a free trial on our free trial registration web page or alternatively via a login link sent to You free of charge ("Free Trial") before ordering a Purchased Service. A Free Trial is available until the earlier of (a) the end of the free trial period or (b) the start date of any Purchased Services ordered by you. Additional trial terms and conditions may apply. In such a case, the additional terms and conditions are made available on the trial registration web page or sent to you with the login link. Any such additional terms and conditions form an integral part of this Agreement and are legally binding.

**3.2** You hereby declare that you will review the User Guide during the trial period so that You become familiar with the features and functions of the Services and its fitness for and its fitness for Your envisaged scope of business/usage before You make Your purchase.

**3.3** In case you do not order a Purchased Services similar as those covered by the Free Trial before the end of the Free Trial period, Your Data and any customizations You made to the Services will be canceled and permanently lost.

**3.4** Notwithstanding the provisions under Section 10, the Services are provided "as is" since You have been granted to evaluate and try the features of the Services during the Free Trial period.

### 4 PURCHASED SERVICES PROVIDED BY US

**4.1 Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Form. Unless otherwise specified in the applicable Order Form, Services are purchased based on the included number of Advisor Visits and for the term as specified in the Order Form. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features. We are thus not obliged to provide any specific future functionality or feature, nor do we commit to provide the Services in the future or to meet any individual requirements You may have or might deem relevant or required.

**4.2 Our Responsibilities.** The scope of Our responsibilities depends on the particular package chosen by YOU in the Order Form as specified in the **SMARTASSISTANT** platform Price List in Annex 2. This document details the included number of Advisor Visits and committed availability (SLA) per calendar year. Besides the committed availability we shall be entitled to conduct (a) planned outtakes for which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the night hours from 2:00 a.m. to 5:00 a.m. Central European Time, or (b) to any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider

failures or delays, or denial of service attacks. Both planned and unforeseeable outtakes shall not be taken into consideration upon calculation of fulfillment of the agreed SLA.

**4.3 Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical measures for protection of the safety, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**4.4 Limitations of Use.** Services may be subject to other limitations, such as, for example, limits on number of Product Advisors you are allowed to create, on internet domains you are allowed to integrate product advisors with and on disk storage space, on the number of calls You are permitted to make against Our application programming interface. Any such limitations are specified in the Order Form or User Guide. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

## 5 YOUR OBLIGATIONS

**5.1** You are responsible to provide Your Data and information necessary to make use of Our Services as specified in the User Guide or based on your experience during the Free Trial Period. You are responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data as well as for ensuring their provision in a form compliant with the requirements as specified in the User Guide and compliance with any applicable data protection provision as to the transfer of the data to us.

**5.2** You will receive login details and a password to access the back-end tools of Our Services. You are obliged to store the access details securely and not to make the password protected back-end tools of Our Services available to anyone other than Your Business Users. You shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use.

**5.3** You are responsible that You, Your Affiliates and Your Business Users comply with this Agreement and to use the Services only in accordance with the User Guide, this Agreement and applicable laws and regulations.

**5.4** You shall not (i) sell, resell, rent or lease the Services, (ii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iii) use the Services to store or transmit Malicious Code, (iv) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (v) attempt to gain unauthorized access to the Services or their related systems or networks.

## 6 NON-Smart Information Systems PROVIDERS

**6.1 Acquisition of Non- Smart Information Systems Products and Services.** Contracts relating to acquisition or data exchanges regarding Non-Smart Information Systems products or services are entered between You and the applicable Non-Smart Information Systems provider, only. We are no party to such agreement and thus do not warrant or support Non-Smart Information Systems products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. Subject to Section 6.3, no purchase of Non-Smart Information Systems products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

**6.2 Non-Smart Information Systems Applications and Your Data.** If You install or enable Non-Smart Information Systems Applications for use with Services, You agree that We may allow provider of such Non-Smart Information Systems Applications to access Your Data as required for the interoperation of such Non-Smart Information Systems Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-Smart Information Systems Application providers.



**6.3 Integration with Non-Smart Information Systems Services.** Our Services may contain features designed to interoperate with Non-Smart Information Systems Applications (e.g. e-commerce-platform, onsite-search, consumer rating or web analytic applications). To use such features, You may be required to obtain access to such Non-Smart Information Systems Applications from their providers. If the provider ceases to make the Non-Smart Information Systems Application available for interoperation with the corresponding Service-features on reasonable terms, We may cease providing such Service-features without entitling You to any refund, credit, or other compensation.

## 7 COSTS AND PAYMENT FOR PURCHASED SERVICES

**7.1 Cost.** You shall pay all costs specified in the Order Form pursuant to the **SMARTASSISTANT** platform Price List in Annex 2. Except as otherwise specified herein or in an Order Form, costs are based on the Purchased Services as specified in the Order Form and are due on a monthly basis. However, in case the actual Advisor Visits exceed Purchased Services in a month, we are authorized to invoice You on the actual usage of the Product Advisors. Unless otherwise agreed in the Order Form, Purchased Services cannot be decreased during the purchased term as defined in the Order Form.

**7.2 Invoicing and Payment.** Payments shall be done according to the payment method agreed upon in the Order Form. In case payment per credit card is agreed and you provide your valid credit card information, We are authorized to charge all Services listed in the Order Form for the ongoing term as well as for any extended term or additional Services via credit card. Unless otherwise agreed in the Order Form, We will invoice our Services monthly as of the last day of each month for all Services performed by Us. Unless otherwise stated in the Order Form, payment must be made within 14 days upon issuance of the invoice and without deduction. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**7.3 Overdue Charges.** In case of late payment and non-regarding any additional damage claims, We may charge interest for delay in the amount of 12% p.a. above the base rate of the European Central Bank and a dunning fee of EUR 10,-- per internal dunning procedure.

**7.4 Suspension of Service and Acceleration.** If any invoiced amount is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 14 days' prior notice that Your account is overdue before we will suspend Our Services which will result in loss of Your data 30 days after the suspension.

**7.5 Taxes.** All fees quoted in the Order Form are net prices excluding value added tax (VAT) and any tax associated with Your purchases. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 8 PROPRIETARY RIGHTS

**8.1 Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You other than as expressly set forth herein.

**8.2 Grant of Rights:** If not otherwise agreed in the Order Form, We grant to you the non-exclusive and non-transferable right to use the **SMARTASSISTANT** platform for the agreed term as stated in the Order Form to the extent necessary for the use of Purchased Services. Any other use or usage of the **SMARTASSISTANT** platform, especially its distribution, transfer to third parties or duplication, is prohibited unless Sec 40(d) or Sec 40(e) of the Austrian Copyright Act grants mandatory rights.

**8.3 Your Applications and Code.** If You, a third party acting on Your behalf, or a Business User creates product advisor processes, applications or program code using the Services we

are authorized to host, copy, transmit, display and adapt such applications and program codes if it is necessary to provide Our Services in accordance with this Agreement. Unless otherwise specified in the applicable Order Form or **SMARTASSISTANT** platform Price List We acquire no right, title or interest from You under this Agreement in or to such product advisor processes, applications or program code, including any intellectual property rights therein.

**8.4 Rights to Your Data.** Subject to the limited rights granted by You hereunder and unless otherwise specified in the applicable Order Form We acquire no right, title or interest under this Agreement in or to Your Data, including any intellectual property rights therein.

**8.5 Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including your End Users and Business Users, relating to the operation of the Services.

## 9 CONFIDENTIALITY

**9.1 Confidential Information.** Both parties agree to keep secret and in confidence all facts, information and data disclosed in the course of Purchased Services or that are related to this Agreement, any additional Terms & Conditions and the technical know-how required for its fulfillment ("**Confidential Information**"). In protecting each other's Confidential Information, both parties shall take the same measures as for their own Confidential Information. This clause shall remain in force after the termination of the contractual relationship.

**9.2** Publicly known, notorious and generally accessible information as well as legal duties of disclosure shall not be subject to the duty provided in Section 9.1.

## 10 WARRANTIES AND DISCLAIMERS

**10.1** In the light of the Free Trial period and the possibility granted to You to test the Services our services are provided "as is". We only warrant that the Services shall perform materially in accordance with the User Guide.

**10.2 Disclaimer. Except as expressly provided herein, We make no express or implied warranties of any kind with regard to Our Services unless otherwise specified in the Order Form.**

**10.3 Non-GA Services.** From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers ("**Non-GA Services**"). You may accept or decline any such trial in Your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in Our sole discretion and may never make them generally available.

## 11 MUTUAL INDEMNIFICATION

**11.1 Indemnification by Us.** We shall defend You against any proceedings brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You; and (c) provide to Us all reasonable assistance.

In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Our Services with



immediate effect by written notice and refund to You any prepaid fees covering the remainder of the term of Your Purchase after the effective date of termination.

**11.2 Indemnification by You.** You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

## 12 LIMITATION OF LIABILITY

**12.1 Limitation of Liability.** Both parties' liability is limited to intentional damage or gross negligence, whereby the other party bears the burden of proof for the qualification of such fault. Any compensation claim is limited to EUR 100.000,- or the amount paid by You under this Agreement in the last six months prior to the incident which caused the damage, provided that in no event either parties' liability arising out of or related to this Agreement exceed the total amount paid by You under this Agreement.

**12.2 Exclusion of Consequential and Related Damages.** In any case, there will be no liability for loss of profit or consequential damages.

**12.3** Both parties may file a complaint with the competent court regarding all compensation claims not accepted in writing by the other party within six months after obtaining first notice of the damage. Otherwise, the claim shall be prescribed and the party shall be barred from asserting these claims in any legal proceeding.

## 13 TERM AND TERMINATION

**13.1 Term of Agreement.** This Agreement commences on conclusion according to Section 1.2 and continues until all Services granted in accordance with this Agreement have expired or been terminated. In case You do not purchase a subscription before the end of Free Trial period, this Agreement will terminate at the end of the Free Trial period.

**13.2 Term of Purchased Services.** Purchased Services commence as specified in the applicable Order Form and continue for the term specified therein. Except as otherwise specified in the applicable Order Form, the term of the Agreement for the Purchased Services will be extended for additional periods equal to the expiring term or one year (whichever is shorter), unless either party gives the other in writing notice of non-renewal at least 30 days before the end of the relevant term. Unless We have given You a written notice of a pricing increase at least 60 days before the end of such prior term the pricing during any such extension term shall be the same as during the expiring term. In such a case the pricing increase shall be effective upon extension and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

**13.3 Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period (ii) if there is a substantial change of Your ownership and/or Your business management that may jeopardize Our interests.

**13.4 Refund or Payment upon Termination.** In case You validly terminate this Agreement pursuant to Section 13.3, We shall refund to You any prepaid fees covering our Services after the effective date of termination. In case We terminate this Agreement pursuant to Section 13.3, You have to pay the applicable fees for the rest of the term agreed in the Order Form.

**13.5 Return of Your Data.** In case of a written request within 30 days after the effective date of termination of the Purchased Services, You will have the opportunity to download a file of



Your Data including questions, answers and information texts and excluding offer data, product data, pictures and rules and conditions provided or created by you. After this time frame we are not obliged to maintain or provide any of Your Data and shall thereafter, unless legally prohibited or otherwise specified in the applicable Order Form or **SMARTASSISTANT** platform Price List, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**13.6 Surviving Provisions.** Section 7, 8, 9, 10.2, 11, 12, 13.4, 13.5, 14 and 15 shall remain in force after the termination of this Agreement.

**13.7** If the Purchased Services are terminated before the end of the agreed term and for reasons that are not under our control, You shall not be entitled to any (pro rate) refund of the agreed fee for the rest of the duration.

## 14 GOVERNING LAW AND JURISDICTION

**14.1 Governing Law and Jurisdiction.** The laws of the Republic of Austria shall exclusively apply to all legal claims arising in connection with this Agreement, conflict of law rules and the UN Convention on Contracts for the International Sale of Goods are expressly excluded.

**14.2 Legal venue.** The place of performance is Vienna. The exclusive legal venue for all claims, from either side, arising in relation to this legal relationship, shall be the court with the regional and material jurisdiction for 1010 Vienna.

## 15 GENERAL PROVISIONS, MISCELLANEOUS PROVISIONS

**15.1 Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing. Written correspondences shall include communication by email, post or facsimile.

**15.2 Annexes.** All Annexes to this Agreement constitute an integrated part of this Agreement.

**15.3 Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**15.4 Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement will not in any way be affected or impaired, and the invalid, illegal, or unenforceable provision will be restated to reflect the original intentions of the parties under this Agreement as nearly as possible in accordance with applicable laws.

**15.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, We may assign this Agreement in its entirety (including all Order Forms), without Your consent to any Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Our assets.

**15.6 Entire Agreement.** This Agreement and it's Annexes, all applicable Order Forms and any additional Terms & Conditions for additional Services including all Annexes thereto, constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision to these documents shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions of these documents the Order Form shall prevail.