

App Terms and Conditions

SmartFox Prime Master License Agreement (MLA)

PLEASE READ THE TERMS OF THIS SMARTFOX PRIME MASTER LICENSE AGREEMENT (THE "TERMS") CAREFULLY BEFORE USING THE SMARTFOX PRIME SOFTWARE AND/OR ANY OTHER TECHNOLOGY AVAILABLE AT WWW.SMARTFOXTECHNOLOGIES.COM (INCLUDING, WITHOUT LIMITATION, ALL LINKED PAGES, CONTENT AND OFFLINE COMPONENTS) (COLLECTIVELY, THE "SERVICES") PROVIDED BY SMARTFOX, LLC. ("SMARTFOX"). BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE ACCEPTING THE TERMS THROUGH AN ORDER FORM/ONLINE ORDERING PROCEDURE THAT INCORPORATES THE TERMS (THE "ORDER FORM;" AND, COLLECTIVELY WITH THE ORDER FORM, THE "AGREEMENT"), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT AND, IN SUCH EVENT, "YOU" OR "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MAY NOT USE THE SERVICES.

This Agreement is between You and SmartFox (doing business as SmartFox Technologies™). The terms of this Agreement shall apply to use of the Services provided by SmartFox (including, without limitation, the services set forth in any Order Forms and all exhibits and/or statements of work thereunder). The terms of this Agreement shall control over any different or additional terms of any purchase order or other nonSmartFox ordering document, and no terms included in any such purchase order or other nonSmartFox ordering document shall apply to the Services. The Terms shall control over any conflicting terms in the Order Form.

If You have purchased or otherwise obtained the Services from a third party authorized by SmartFox to sell such Services (a "Reseller"), then: (a) these Terms shall apply to such Services purchased or otherwise obtained by You from the Reseller; (b) these Terms are between SmartFox and You; however, the order form by which You order the Services and any other related products or services from Reseller (which shall be referred to herein as the "Reseller Order Form") is between You and the Reseller; and (c) notwithstanding the last sentence of the preceding paragraph, the terms of this Agreement shall control over any different, additional, and/or conflicting terms of the Reseller Order Form, and the Reseller Order Form shall not amend or modify any terms of this Agreement.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose.

This Agreement was last updated on 24th August, 2020. It is effective between You and Us as of the date You accept this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

Any capitalised terms not otherwise defined in this Agreement shall have the meaning given below:

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Effective Date” means the date of Your acceptance of the terms and conditions of this Agreement through either clicking a box indicating Your acceptance or by executing an Order Form (manually or submitting electronically the Order Form) as applicable.

“Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

“Confidential Information” means all confidential information disclosed by a Party (“Disclosing Party”) to the other Party (“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.

“Force Majeure Event” means any event 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 labour problems (other than those involving Our employees), Internet service provider failures or delays and denial of service attacks.

“Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“Non-SmartFox Applications” means online applications and/or services and/or offline software products that are provided by entities or individuals other than Us, such as Fedex, UPS, and that interoperate with the Services, including but not limited to those provided by Non-SmartFox Service Providers.

“Order Forms” means the orders placed hereunder that are entered into between You and Us for the purchase of subscriptions to Our Services either electronically or in writing signed by the parties. Order Forms shall be deemed incorporated herein by reference.

“Purchased Services” means Services for which You purchase User Subscriptions to use such Services under an Order Form, as distinguished from those provided pursuant to a free trial.

“SFDC” means salesforce.com.

“SFDC Services” means the online hosting platform and related services provided by SFDC upon which the Services are hosted, along with Your Data, and which interoperate with the Services, and (where applicable) the integration of the Software to interoperate with such SFDC Services.

“Services” means Our software as a services offerings made available by Us via the SFDC Services and the customer login link as designated by Us or SFDC, as applicable, including associated offline components, as described in the User Guide. Our “Services” exclude Non-SmartFox Applications and SFDC Services.

“Subscription Fees” means the fees payable by You for the use of the Services during the Subscription Term as set out in the applicable Order Form.

“Subscription Term” means the period commencing on the later of (i) the effective date of the applicable Order Form (or such other effective date as specified in the Order Form) and (ii) Our receipt of Your payment of the applicable Subscription Fees and continuing for the period set out in the Order Form.

“Trial Period” has the meaning given in Section 4 of this Agreement.

“User Guide” means the online user guide for the Services, accessible via www.smartfoxtechnologies.com, as updated from time to time.

“User Subscriptions” means each subscription license purchased by You for the number of Users indicated in the applicable Order Form for such Users to access and use the Services in accordance with this Agreement.

“Users” means those individuals who are authorised by You to use the Services, who have been supplied user identifications and passwords by You (or by Us or SFDC at Your request), and in the case of Purchased Services, for whom User Subscriptions have been purchased. Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

“We”, “Us”, and “Our” “SmartFox” means the applicable SmartFox entity set forth in this Agreement.

“You” “Your” or “Customer” means the company or other legal entity for which You are accepting this Agreement for the trail use or purchase use of the User Subscriptions to use the Purchased Services in accordance with the terms and conditions of this Agreement.

“Your Data” means all electronic data or information submitted by You when using the Services and which is hosted on the SFDC Services.

2. USE OF SERVICES

Subject to the terms and conditions of this Agreement, SmartFox grants to You, during the Subscription Term (as defined in Section 10) , a non transferable, non sublicensable, nonexclusive, limited right to permit You and those individuals authorized by You or on Your behalf, and who are Your employees, agents or contractors (each a “User” and, collectively, “Users”), to use the Services, all solely for Your own internal business operations only in accordance with (a) SmartFox Prime User Guide generally made available by SmartFox following Your order with regard to such Services (“Documentation”), and (b) any User and/or other restrictions set forth in the Order Form (as applicable). Upon SmartFox’s request, SmartFox will be entitled to audit or have audited all systems and records relevant to assure compliance with the foregoing; any noncompliance will be at Your expense. The maximum number of Users that You

authorize to access the Services shall not exceed the number of User licenses (also referred to as “subscriptions”) You have purchased, as evidenced in the Order Form. You acknowledge and agree that SmartFox shall own all right, title and interest in and to all intellectual property rights in the Services (including all derivatives or improvements thereof), and any suggestions, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Services. You hereby do and shall make all assignments and take all acts necessary to accomplish the foregoing ownership. The rights granted to You in the Agreement are subject to all of the usage restrictions described in Section 3 - Usage & Restrictions.

The Services are subject to modification at SmartFox’s sole discretion, for any purpose deemed appropriate by SmartFox. SmartFox will use reasonable efforts to give You prior notice of any such modification.

3. USAGE & RESTRICTIONS

3.1 You shall not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to or provided with the Services (“Software”); (ii) modify, translate, or create derivative works based on the Services or any Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software; (iii) use the Services or any Software for time sharing or service bureau purposes or otherwise for the benefit of a third party (except as expressly allowed herein); (iv) use or access the Services to build or support, and/or assist a third party in building or supporting, products or services competitive to SmartFox; (v) remove any proprietary notices or labels from the Services; or (vi) permit anyone else to do any of the foregoing. You shall not 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 or other rights and We reserve the right to remove any content where, in Our sole and reasonable discretion, we suspect such content to be inappropriate, upon notice to You, (e) use the Services to store or transmit Malicious Code.

3.2 You may not access the Services or any software associated with the Services if You are a direct competitor of SmartFox (as determined in SmartFox’s sole discretion), unless You obtain SmartFox’s prior written consent.

3.3 You acknowledge and agree that the Services operates on or with a hosted application platform operated by a third party (such as Salesforce.com, Salesforce Checkout, Google Chrome Web Store, Gmail, and Google Apps), and SmartFox shall not be responsible for the operation of any such third party service, nor the availability or operation of the Services to the extent such availability and operation is dependent upon the availability and operation of such third party hosted application platforms. You shall be solely responsible for procuring any rights necessary for Users to access such service and for complying with any applicable terms or conditions. SmartFox does not make any representations or warranties with respect to any third party providers or any of their products or services. Any exchange of data or other interaction between Users and a third party provider, and Your purchase of any product or service offered by such third party provider, is solely between You and such third party provider and is governed by such third party’s terms and conditions.

3.4 You will (a) be responsible for Your and Your Users' compliance with this Agreement and Order Forms, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) 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, and (d) use the Services only in accordance with the Documentation and applicable laws and government regulations.

4. FREE TRIAL

4.1 Trial Conditions. If We make any of our products and services available to You as part of a free trial, those products and services will be considered "Services" under this Agreement, including this Section 4, even if the products and services are not specified in an Order Form, notwithstanding the "Services" definition in Section 1 (Definitions). Any such free trial will end at the earlier of (a) the end of the free trial period, (b) the start date of any subscriptions purchased by You for such Services, or (c) termination by Us in our sole discretion. Any free trial user must accept the terms and conditions provided in this agreement especially Sections 1-5, 7-9, and 12-20.

4.2 Trial Data. Any data You enter into the Services and any customizations made to the Services by or for You during a free trial will be permanently lost unless You purchase a subscription to the same Services as those covered by the trial. Any free trial, We provide the Services "AS IS," without any warranty, support, covenant, commitment or liability whatsoever, to the extent permitted by law.

4.3 Trial License. If We make any of Our products and services available to You as part of a free trial, We will only make one Admin and one End User SmartFox Prime license available to You on a trial basis free of charge for the listing trial period. If You elect to use this Service for the listing trial period and do not purchase a subscription for the Services before the end of that listing trial period, this Agreement will terminate at the end of such Trial Period.

4.4 Trial Documentation. Please review the User Guide during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

5. SFDC SERVICES

5.1 This Agreement. This Agreement is between You and Us. You acknowledge that Our Services are hosted for Us by SFDC and are also integrated as part of and are interoperable with the SFDC Services. By agreeing to the terms of this Agreement, You confirm that You accept and agree to abide by the additional SFDC terms of use for Your use of the SFDC Services. However to the extent SFDC and You have entered into a valid agreement for the SFDC Services, the terms of such agreement shall govern Your use of and access to such SFDC Services in connection with the Services and shall prevail over the SFDC terms of use set forth by SFDC. Separate licensing terms may also apply for Your use of the SFDC Services as made available to You by SFDC. Notwithstanding any other provision of this Agreement, You acknowledge and agree that We shall not be responsible or liable for such SFDC Services or for the acts or omissions of SFDC.

5.2 SFDC Interoperate Services. SFDC Services may contain features designed to interoperate with SmartFox. To use such features, You may be required to obtain access and/or comply with such SFDC applicable terms of use. If SFDC ceases to make the SmartFox features available for interoperation with SFDC, We may cease providing such Services features without entitling You to any refund, credit, or

other compensation. You acknowledge and agree that We shall not be responsible or liable for any such SFDC acts or omissions.

5.3 SFDC Services Cancellations. If You decided to no longer use SFDC or SFDC Services, You confirm that You accept and agree to provide a 30 day notice before the SFDC cancellation of services occur in writing to SmartFox and pay any and all remaining balances due to SmartFox under the Terms of this agreement.

6. SUPPORT

6.1 You will provide SmartFox with the name and email address of Your designated technical contact person, which shall have access to SmartFox's technical support. You give SmartFox permission to send product information and product updates to the technical contact person. SmartFox reserves the right to suspend Your and/or Your clients' access to the Services for scheduled or emergency maintenance.

6.2 Subject to this Agreement, SmartFox will provide Support to the designated technical contact person through the Services and by email. Although resolution times are not guaranteed, SmartFox commits to respond to each request for Support from the designated technical contact person (each, a "Support Request") within 48 hours. Customer's sole and exclusive remedy for any alleged failure by SmartFox to provide Support with reasonable skill, care and diligence following a Support Request shall be re-performance of the applicable Support.

7. INTELLECTUAL PROPERTY OWNERSHIP

7.1 SMARTFOX. SmartFox and its licensors own all rights, title and interest, including all related Intellectual Property Rights, in and to the SmartFox Prime System, the Content and the Service, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. The SmartFox name, the SmartFox logo, and the product names associated with the Service are trademarks of SmartFox.

7.2 CUSTOMER. You retain all right, title and interest in and to the Customer Data. You grant to SmartFox all necessary licenses and rights in and to Customer Data solely as necessary for SmartFox to provide the Service to You or as required by law. SmartFox will not knowingly use or access any Customer Data except as necessary to provide the Service or Support Services.

8. YOUR DATA

SmartFox does not own any data or information that You submit to the Services in the course of using the Services (Your "Data"). You, not SmartFox, shall have sole responsibility that Your Data is in proper format as specified by the Documentation; (ii) Your Users are familiar with the use and operation of the Services, and (iii) no other software, data or equipment is having an adverse impact on the Services has been introduced. Nothing herein shall be deemed to prevent SmartFox from collecting, using and disclosing aggregate information relating to the Services for the purposes of providing and improving the performance of the Services.

9. CONFIDENTIALITY

9.1 Licensee's Confidential Information. Without limitation, Licensee's Confidential Information will include Licensee Data; SmartFox's Confidential Information will include the Services; and Confidential Information of each Party will include business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

9.2 Protection of Confidential Information. The Receiving Party will use the same degree of care to protect the Disclosing Party's Confidential Information that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care). The Receiving Party agrees (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such 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. Neither Party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and its legal counsel and accountants without the other Party's prior written consent.

9.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such 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 to which the Disclosing Party is a party, 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 such Confidential Information.

10 SUBSCRIPTION TERM & TERMINATION

10.1 Term & Termination. This Agreement is valid for the term indicated on the Order Form (the "Subscription Term"). The Subscription Term shall commence when You begin using the Services, or as otherwise set forth in the Order Form. Except as otherwise provided in an Order Form issued by SmartFox, Services subscriptions may be renewed under SmartFox's then current applicable pricing, policies, and terms, subject to SmartFox's acceptance and Your payment of fees for such Services. In the event of any material breach of the Agreement by either party, the nonbreaching party shall have the right to terminate the Agreement if such breach has not been cured within 30 days of written notice from the nonbreaching party specifying the breach in detail. SmartFox may immediately suspend or cancel Your access to the Services during such cure period if (i) You fail to make payment due to SmartFox under the Agreement and do not cure such non payment within ten business days after SmartFox has provided You with notice of such failure, or (ii) You violate any provision within Sections 2, 3, or 10.2 of this Agreement. Any suspension by SmartFox of the Services under the preceding sentence shall not excuse You from Your obligation to make payment(s) under the Agreement. If SmartFox terminates this Agreement or any Order Form, You must pay within 30 days all amounts which have accrued prior to such termination, as

well as all sums remaining unpaid for Services for the remainder of the then current term (even if earlier terminated) under the applicable Order Form(s) plus related taxes and expenses. All sections of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued rights to payment, use restrictions and indemnity obligations, confidentiality obligations, warranty disclaimers, and limitations of liability.

10.2 Notices. SmartFox may give notice applicable to SmartFox's general Services customer base by means of a general notice specifically to You by electronic mail to Your e-mail address on record in SmartFox's account information or by written communication sent by first class mail or pre paid post to Your address on record in SmartFox's account information. If You have a dispute with SmartFox or You wish to provide a notice under the Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: SmartFox Technologies, PO Box 2214, Carolina Beach, NC 28428.

11 FEES, TAXES, BILLING, & PAYMENT

11.1 Fees. You agree to pay for the Services at the then-current standard license/subscription fees for the Services (the "Fees"). SmartFox reserves the right to modify the Fees and will notify You of any such changes; if You wish to continue using the Services, You must pay all applicable Fees. All fees due under the Agreement are noncancelable and the sums paid are non refundable, except as otherwise specified in Section 4 of the Agreement.

11.2 Taxes. SmartFox's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies, or duties (excluding U.S. taxes based on SmartFox's income), even if such amounts are not listed on an Order Form.

11.3 Payment Methods. You shall pay all charges in U.S. Dollars or in such other currency as agreed to in writing by the parties. You will provide SmartFox with valid and updated credit card or approved purchase order information and complete and accurate billing and contact information. If You provide credit card information to Currency, You authorize Currency to bill such credit card (a) at the time that You order any products or services, for all products and services You are purchasing, and (b) at the time of any renewal, for the amount charged for any renewal Subscription Term(s) as set forth in Section 11.6.

11.4 Billing & Payment. If SmartFox, in its discretion, permits You to make payment using a method other than a credit card, SmartFox will invoice You at the time of the initial Order Form and for annual subscriptions approximately one month in advance of the start of any renewal or subsequent billing period. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

11.5 Unpaid Invoices. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

11.6 Renewals. The initial term of each subscription to SmartFox Services will be described in the applicable Order Form (the "Initial Term"). Except as otherwise described in an Order Form, subscriptions for each SmartFox Service will automatically renew at the latest subscription price for additional periods equal in length to the expiring subscription term (each, a "Renewal Term") unless either party provides notice of non-renewal at least 30 days prior to commencement of the next renewal term. If the expiring

subscription term is one year or longer, SmartFox will notify Licensee of a pending auto-renewal at least 60 days prior to commencement of the next renewal term.

12. REPRESENTATIONS & WARRANTIES

Each party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the right, power and authority to enter the Agreement and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (c) the execution of any Order Form(s) incorporating this SmartFox Prime License Agreement (known as Agreement) by its representative whose signature is set forth therein has been duly authorized by all necessary corporate or organizational action of the Party; (d) when any Order Form incorporating this Agreement is executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) it will abide by all applicable federal, state and local laws and regulations with respect to online activities, use of end user data and the products and services offered by each Party in connection with the Agreement.

13. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE SLA, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND SMARTFOX MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS. SMARTFOX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER IMPLIED OR STATUTORY WARRANTIES, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE ABOVE. SMARTFOX DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL WORK WITHOUT INTERRUPTIONS.

14. LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR THE PARTIES' INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED THE FEES RECEIVED FROM OR PAYABLE BY LICENSEE TO SMARTFOX PURSUANT TO THE AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. EXCEPT FOR A BREACH OF THE LICENSE RESTRICTIONS OR CONFIDENTIALITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR LOSS OR INTERRUPTION OF USE OF ANY FILES, DATA OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE

OF ANY LIMITED REMEDY. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT.

15. MUTUAL INDEMNIFICATION

15.1 Indemnification by Us. Subject to section 15.2 below, We shall defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of the Purchased Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party in the United States of America and the European Economic Area (a "Claim Against You"), and shall be responsible for payment of any damages, finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You and for any reasonably legal fees incurred in connection with Our defense of the Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You, (b) gives Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability), (c) provide to Us all reasonable assistance, at Our expense; and (d) use reasonable endeavors to mitigate any losses in connection with such claims. In the event of a Claim Against You, or if We reasonably believe the Purchased Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Purchased Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Purchased Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

15.2 Exclusions. We and Our Affiliates shall not be liable to You to the extent that the alleged Claim Against You is based on: (a) a modification of the Services by anyone other than Us; (b) Your use of the Services in a manner contrary to this Agreement or the instructions given to You by Us; (c) Your use of the Services in connection with the SFDC Services or Non-SmartFox Applications to the extent such SFDC Services or Non-SmartFox Applications cause the infringement Claim, or (d) Your use of the Services after notice of the alleged or actual Claim Against You from Us or any appropriate authority.

15.3 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 (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, and 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.

16. VERIFICATION

At SmartFox's written request, You shall furnish SmartFox with a document signed by Your authorized representative verifying that the Services are being used pursuant to the provisions of this Agreement and the applicable Order Form. You agree to provide such information and documents reasonably requested by SmartFox with respect to Your use of, and payment of fees for, the Services. If the verification

described in this section reveals that You have underpaid fees to SmartFox, You shall promptly pay to SmartFox such fees at the prices set forth in the applicable Order Form. You are responsible for implementing reasonable means to monitor Your compliance with the terms of the Agreement.

17. FORCE MAJEURE

Neither party shall be responsible for failure or delay in performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such an event continues for more than 30 days, either party may cancel unperformed Services upon written notice. This section does not excuse either party of its obligations to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services provided.

18. PUBLICITY

You are permitted to state publicly that You are a customer of the Services, consistent with the Trademark Guidelines. You agree that SmartFox may include Your name or brand in a list of SmartFox customers, online or in promotional materials. You also agree that SmartFox may reference You as a customer of the Services that are the subject of this Agreement.

19. GOVERNING LAW & JURISDICTION

19.1 Jurisdiction. The laws of the State of North Carolina, excluding its conflicts of law rules. The parties agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction and venue in the federal and state courts within New Hanover County, North Carolina. The parties hereby consent to and waive defenses of the personal and exclusive jurisdiction and venue of these courts. The United Nations Convention on the International Sale of Goods (CISG) and the Uniform Computer Information Transactions Act shall not apply.

19.2 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments and appendices attached to this Agreement, is likely to involve complicated and difficult issues and , therefore, each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments and appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that the other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) it has considered the implications of this waiver, (c) it makes this waiver voluntarily, and (d) it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

20. MISCELLANEOUS

20.1 Assignment. Neither Party may assign the Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that either Party may assign the Agreement to a parent, affiliate, subsidiary, or

successor to its business, if any, resulting from a merger, acquisition, or other change in control. Subject to the foregoing, the Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section 12(a) will be null and void.

20.2 U.S. Government Rights. To the extent applicable, SmartFox provides the SmartFox Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with SmartFox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

20.3 Export Regulations. Licensee agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State. Specifically, Licensee covenants that it will not -- directly or indirectly -- sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from SmartFox under the Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

20.4 Severability. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement will remain in full force and effect.

20.5 Modification and Waiver. No waiver or modification of the Agreement will be valid unless made in writing and signed by both parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof.

20.6 Entire Agreement. This Agreement, together with any applicable Order Forms, embodies the entire understanding of the Parties and supersedes any previous or contemporaneous communications, whether oral or written; and may be amended only by a writing signed by both Parties. Unless explicitly provided for in an applicable Order Form, Licensee agrees that its obligations under the Agreement are not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by SmartFox regarding future functionality or features.