



Datametrics

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Pi Datametrics

Terms and Conditions

Background

Intelligent Positioning has developed the Solution which is a proprietary software called Pi-Datametrics and which is cloud hosted. Pi-Datametrics enables the Customer to decide and set its own parameters for the analysis and diagnosis of search engine optimisation and digital marketing performance.

Intelligent Positioning wishes to license the Solution to the Customer and the Customer wishes to licence use of the Solution on the terms of this Agreement.

1. Definitions

1.1. The definitions and rules of interpretation in this clause apply in this Agreement:

Associated Company	means a holding company or a subsidiary of the Customer as defined in Section 1159 of the Companies Act 2006.
Business Day	means any day other than a Saturday, Sunday or bank holiday when banks in London are open for business.
Confidential Information	means technical and commercial know-how, specifications, inventions, processes, initiatives and software codes which are of a confidential nature together with any other confidential information concerning a party's business, finances, customers, products and services.
Consultancy	means advice on digital strategy and Search Engine Optimisation which may be provided by Intelligent Positioning if requested by the Customer at an additional cost .
Customer Created IPR	means IPR created by Intelligent Positioning for the Customer's use pursuant to the provision of the

	Services including but not limited to indexes, insights, reports, workspaces.
Data	means the data or information in whatever form owned by Intelligent Positioning and held on the database made available to the Customer as part of the Services.
Data Centre	means the physical location where the Servers upon which the Solution is hosted are located.
Data Protection Requirements	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable Law about the processing of Personal Data and privacy;
Derived Data	means any Manipulated Data to such a degree that it cannot be identified as originating or deriving directly from the Data or the Services and cannot be reverse-engineered such that it can be so identified.
The GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679)
Intellectual Property Rights (IPR)	means all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade get-up, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
LED	Means Law Enforcement Directive (Directive (EU) 2016/680);
Manipulate	means to combine or aggregate the Data with other data or information or to adapt the Data.
Manipulated Data	means any Data which has been Manipulated. Manipulated Data includes any Derived Data.
Order form	Means the order form completed by the Customer in order to secure the Services from Intelligent Positioning;
Personal Data	means Personal Data as defined by the GDPR.
the Purpose	means the use of the Solution and the Data for improving the organic search performance objectives of the Customer, improving the digital performance objectives for the Customer and providing insights, reports and intelligence for the Customer.
the Servers	means Intelligent Positioning servers located at the Data Centre upon which the Solution is hosted.
the Services	means the services (including the Support) to provide the Solution details of which are set out in clause 2.

SEO	means search engine optimisation.
the Solution	means the Intelligent Positioning software known as Pi-Datametrics, including without limitation any and all application programming interfaces (APIs) of the Pi Platform, use of which is licensed to the Customer on the terms of this Agreement.
Support	means the service level agreement for maintenance and support for the Solution which is set out in Schedule 1.
the Term	means the Term of this Agreement referred to in clause 9 and specified in the Order Form.
Update	means any updates, improvements and fixes of the Solution as well as new versions issued by Intelligent Positioning periodically.
User	means any employee, consultant, contractor or agent of the Customer authorised by the Customer to access and use the Services, using his own unique identifier provided by Intelligent Positioning.

2. Agreement

- 2.1 The Agreement between Intelligent Positioning and the Customer is formed when the Order Form signed by the Customer is accepted by Intelligent Positioning.
- 2.2 The Agreement consists of these Terms and Conditions and the Order Form and in the event of conflict between the terms of this Agreement and the terms of the Order Form, the terms of the Order Form shall prevail.

3. Services

- 3.1. Intelligent Positioning shall provide the Services under the terms of this Agreement which comprise:
- 3.1.1. Hosting the Solution on the Servers.
- 3.1.1.1. Configuring the Solution for unique use by the Customer.
- 3.1.1.2. Licensing use of the Solution by the Customer.
- 3.1.1.3. Training, technical assistance and provision of Support in relation to the Solution.
- 3.1.2. If the Customer requires Consultancy it shall notify Intelligent Positioning and Intelligent Positioning will provide a proposal and cost estimate for such Consultancy for agreement.

4. Solution Licence

- 4.1. In consideration of the charges paid by the Customer, Intelligent Positioning grants to the Customer a non-exclusive licence for the Term to use the Solution.
- 4.2. There is no limit on the number of Users who may access the Solution but Intelligent Positioning must be notified of all Users. On notification the User will be sent a link with details of how to log in. .
- 4.3. The Customer may not sub-licence, assign or novate the benefit or burden of this licence or deal with it in any way without the prior written consent of Intelligent Positioning.

5. Database Licence

- 5.1. Intelligent Positioning grants to the Customer a non-exclusive licence for the Purpose only during the Term to:

- 5.1.1. Access, view and Manipulate Data and create Derived Data;
- 5.1.2. Store the Data and Manipulated Data on the Solution; and
- 5.1.3. Use the Data in relation to the Purpose.
- 5.2. The Customer shall not redistribute or sub-licence the Services or the Data or allow any third party to have the benefit of the Services or the Data.
- 5.3. Intelligent Positioning grants to the Customer a licence to use the results from the Service for their own business purposes only.

6. Updates

- 6.1. As part of the Services, Intelligent Positioning will Update the Solution regularly when maintenance releases are made available. Intelligent Positioning will ensure that Updates:
 - 6.1.1. Are configured for the Customer's Use where appropriate; and
 - 6.1.2. Do not adversely affect the existing facilities or functions of the Solution.
- 6.2. Where Intelligent Positioning release an update of the Solution with additional functionality, Intelligent Positioning shall notify the Customer in advance and the Customer is entitled to access and use such functionality. There is currently no cost for the update, however Intelligent Positioning reserve the right to charge and will notify the Customer if a charge will apply.
- 6.3. Training for new releases can be provided on request via support quota allocated in an order form

7. Intelligent Positioning's Obligations

- 7.1. Intelligent Positioning warrants, represents and undertakes to provide the Services with reasonable skill and care using professionally trained staff with appropriate qualifications.
- 7.2. Intelligent Positioning warrants, represents and undertakes to maintain industry and its own best practices for the supply of the Services but does not warrant that the operation of the Solution will be uninterrupted or error free.
- 7.3. Intelligent Positioning warrants, represents and undertakes that neither (i) the Solution and any use and/or exploitation of the Solution by the Customer, nor (ii) its provision of the Services or its performance of this Agreement will infringe the rights (including the Intellectual Property Rights) of any third party.
- 7.4. Intelligent Positioning will use commercially reasonable endeavours to make the Solution available 24 hours a day 7 days a week except for:-
 - 7.4.1. Planned maintenance carried outside of the normal business hours of 09.00 – 17.30 on a Business Day. Where possible, Intelligent Positioning will provide the Customer with at least 4 hours advance notice of any planned maintenance.
 - 7.4.2. Planned maintenance carried out within normal business hours, provided that the Customer has been given no less than 48 hours' notice.
- 7.5. Intelligent Positioning will as part of the Services and at no extra cost to the Customer provide the Customer with Support during normal business hours. Details of standard Support are set out in Schedule 1 Pi Platform Support SLA

- 7.6. Intelligent Positioning will provide training in accordance with the prices and other details set out in the Order Form. It is a requirement that the Customer undertakes at least the minimum training stated in the Order Form. Further training is available as required with any charges agreed in advance between both parties.
- 7.7. Intelligent Positioning warrants, represents and undertakes not to access, store, distribute or transmit to the Solution any viruses or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive.

8. Customer's Obligations

- 8.1. The Customer is responsible for ensuring that it has the technical capability and functionality in relation to its web browser infrastructure to ensure that it can benefit fully from the use of the Solution. The Customer will need to check Intelligent Positioning's website as to recommendations as to compatibility of different web browsers:
<http://www.pi-datametrics.com/support/technical-requirements/> Failure to do so may affect Intelligent Positioning's ability to provide the Services.
- 8.2. The Customer shall use all reasonable endeavours to prevent any unauthorised access to or use of the Services and in the event of any such unauthorised access or use it will promptly notify Intelligent Positioning.

9. Term, Charges and Payment

- 9.1. This Agreement shall commence on the Agreement Start Date set out at the start of this Agreement and shall continue for the Term stated on the Order Form. At the end of the Term this Agreement shall automatically renew for successive 12 month terms unless either party serves written notice of intention to terminate on the other party by giving notice of termination as specified in the Order Form and if no notice is specified in the Order Form then by giving no less than 60 days' notice of termination prior to the anniversary of the Agreement. This does not affect the ability of either party to terminate in accordance with the provisions of clause 14 if appropriate.
- 9.2. All amounts and fees stated in this Agreement and the Order Form are exclusive of Value Added Tax which shall be added to Intelligent Positioning's invoices at the current rate at the time of invoicing.
- 9.3. Intelligent Positioning's invoices will be raised monthly in advance, are due and payable 30 days after the invoice date (Due Date). If Intelligent Positioning has not received payment within 5 days of the Due Date:
 - 9.3.1. Intelligent Positioning shall be under no obligation to provide the Services whilst the invoice remains unpaid; and
 - 9.3.2. Interest will accrue on such unpaid invoice from the date it became overdue, until payment, at the current rate payable under the Late Payment of Commercial Debts (Interest) Act 1998.

10. Personal Data

- 10.1. The Customer confirms that for the purposes of the Data Protection Requirements and other relevant legislation the Customer is the data controller (as defined in the GDPR) in respect of any Personal Data obtained or supplied for processing by use of the Solution. The Services must be used in conjunction with a unique ID (which may include user names, passwords etc), which the

Customer must keep safe and confidential. The Customer is responsible for all use of the Service made using such ID.

10.2. Intelligent Positioning is also a data controller (as defined in the GDPR) in respect of any Personal Data obtained during the course of providing the Service to the Customer. For further information on how Intelligent Positioning deals with Personal Data, please refer to the attached privacy notice, Schedule 2.

10.3. Each party will at all times comply with the Data Protection Requirements.

11. Intellectual Property Rights

11.1. The Customer acknowledges that:

- All intellectual property rights in the Data and the Solution are the property of Intelligent Positioning;
- It shall have no rights in or to the Data or the Solution other than the right to use them in accordance with the terms of this Agreement.

11.2. The Customer will own all Intellectual Property Rights in information that the Customer submits to the Service relating to the configuring of the Solution for unique use by the Customer.

11.3. The Customer will own all Customer Created IPR

11.4. Intelligent Positioning owns all Intellectual Property Rights in all other data included in the Service, and in the Service itself.

12. Confidentiality

12.1. Except to the extent set out in this clause or where disclosure is expressly permitted, each party shall treat the other party's Confidential Information as confidential and not disclose the other party's Confidential Information to any third party without the prior written consent of the other party save as permitted by this Agreement.

12.2. Each party will be entitled, but only to the extent reasonably necessary, to disclose the Confidential Information or any part of it:

12.2.1. to its officers, employees, servants, agents, advisers, insurers or other professional advisers, to the extent necessary to enable it to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement subject in each case to the party making the disclosure ensuring that the person(s) in question is aware of the obligations in respect of confidentiality contained herein and keeps the Confidential Information confidential and does not use it except for the purposes for which the disclosure is made; or

12.2.2. to the extent it is required to do so by law or by any public, quasi-governmental, supervisory or regulatory authority or any court or tribunal of competent jurisdiction; or

12.2.3. to the extent that the Confidential Information has, except because of breach of confidentiality, become publicly available or generally known to the public at the time of the disclosure; or

12.2.4. to the extent that it has obtained the Confidential Information from a third party who is not in breach of any obligation or confidentiality to the other party or at all.

13. Indemnity

- 13.1. Subject to clause 15, the Customer shall defend and indemnify Intelligent Positioning against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with breach of the Customer's obligations under clause 8.
- 13.2. Notwithstanding clause 15 Intelligent Positioning shall defend, hold harmless and indemnify the Customer from and against any claim that any software or Data forming part of the Solution infringes any valid third party intellectual property right including copyright or database right, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 13.2.1. Intelligent Positioning is given prompt notice of any such claim;
 - 13.2.2. The Customer provides reasonable co-operation to Intelligent Positioning in the defence and settlement of such claim, at Intelligent Positioning's expense; and
 - 13.2.3. Intelligent Positioning is given sole authority to defend or settle the claim.
- 13.3. In the defence or settlement of the claim, Intelligent Positioning may obtain for the Customer the right to continue using the relevant software or Data, replace or modify it so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Customer. Intelligent Positioning shall have no liability if the alleged infringement is based on:
 - 13.3.1. modification of such software or Data by the Customer, User or a third party with the Customer's consent; or
 - 13.3.2. the Customer's or the User's use of such software or Data in a manner contrary to the instructions given to the Customer by Intelligent Positioning; or
 - 13.3.3. the Customer's or the User's use of such software or Data after notice of the alleged or actual infringement from Intelligent Positioning or any appropriate authority.
- 13.4. Clauses 13.2 and 13.3 state the Customer's sole and exclusive rights and remedies and Intelligent Positioning's entire obligations and liability, for patent, copyright, database or other intellectual property infringement.

14. Termination

- 14.1. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
 - 14.1.1. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 14.1.2. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party, or an event occurs that is analogous to any such events; or

- 13.1.3. an administrator or receiver is appointed in respect of the business or any assets or undertaking of the other party; the other party makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors; the other party ceases or threatens to cease to trade; or the other party takes or suffers any similar action in any jurisdiction in consequence of debt, or an event occurs that is analogous to any such events.
- 13.2. Each party shall as soon as is reasonably practicable give notice in writing to the other party of any event within clauses 13.1.2 or 13.1.3 which occurs during the Term and which would entitle the other party to terminate this Agreement.
- 13.3. On termination of this Agreement for any reason:
 - 13.2.1 any licence or other permissions granted to the Customer to use the Solution shall immediately terminate;
 - 13.2.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
 - 13.2.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Liability

- 15.1. This clause sets out the entire financial liability of both parties (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of:
 - 15.1.1. any breach of this Agreement;
 - 15.1.2. any use made by the Customer of the Solution or the Services or any part of them; and
 - 15.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 15.2. Except as expressly and specifically provided in this Agreement:
 - 15.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer; and
 - 15.2.2. all warranties, conditions and other terms implied by statute or common law are, excluded from this Agreement to the extent this is permitted by law.
- 15.3. Nothing in this Agreement excludes the liability of either party for:
 - 15.3.1. death or personal injury caused by either party's negligence; or
 - 15.3.2. fraud or fraudulent misrepresentation.
- 15.4. In addition to liability under clause 15.3, both parties accept liability for direct loss arising in contract or tort (including negligence or breach of statutory duty) under the terms of this Agreement.
- 15.5. Neither party shall be liable whether in contract or in tort (including negligence or breach of statutory duty) for any special, indirect or consequential loss or expenses.
- 15.6. Intelligent Positioning's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of the following sums for any single incident or series of connected incidents:-
 - 15.6.1. £2m; or
 - 15.6.2. 200% of the price paid or payable by the Customer for all Services provided under this Agreement during the 12 month period immediately preceding any cause of action.

16. Force Majeure

Neither party is liable for a breach caused by force majeure or event beyond its reasonable control, such as natural disaster, war, government action, or failure of third party telecommunications or other services.

17. Waiver

- 17.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 17.2. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.
- 17.3. Any waiver of a breach of any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach and shall in no way affect the other terms of this Agreement. In no event will any course of dealing between the parties or any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

18. Assignment

- 18.1. Neither party shall, without the other's prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

19. Third party rights

Except insofar as this Agreement expressly provides that a third party may in his own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

20. Notices

- 20.1. Any notice given by a party under this Agreement shall be in writing and shall be:
 - 20.1.1. Delivered by hand or by prepaid first-class post or other next working day delivery service at its registered office or its principal place of business as set out in this Agreement;
 - 20.1.2. Sent by email to an email address notified for the purpose in this Agreement or notified as an amendment subsequently;
 - 20.1.3. Any notice to be served upon the Customer by email must be sent to the Customer's contact email
 - 20.1.4. Any notice to be served by email upon Intelligent Positioning must be sent to dan@intelligentpositioning.com
- 20.2. Any notice shall be deemed to have been received:
 1. If delivered by hand at the time the notice is left at the proper address.
 2. If sent by prepaid first-class post or other next working day delivery service at 9.00 a.m. on the second Business Day after posting.
 3. If sent by email at 9.00 a.m. on the next Business Day after transmission.

- 20.3. This clause does not apply to the service of proceedings or other documents in a legal action.

21. Dispute Resolution

- 21.1. The parties shall attempt to resolve any dispute arising in relation to this Agreement through negotiation between senior executives of the parties who have authority to settle such dispute but if the matter is not resolved through negotiations then the parties will follow the procedure set out below.
- 21.2. If the parties cannot resolve a dispute in accordance with the procedure in clause 22.1 above then they shall seek to resolve the dispute using an Alternative Dispute Resolution (ADR) procedure recommended by the Centre for Effective Dispute Resolution (CEDR) acceptable to both parties before pursuing any other remedies available. If either party fails or refuses to agree to participate in the ADR procedure or if in any event the dispute is not resolved within 60 days after reference to the ADR procedure either party may institute legal proceedings in accordance with clause 22.

22. Governing law and jurisdiction

- 22.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 22.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

23. Entire Agreement

23.1. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding, whether oral or written, between the parties (or any of them) in relation to such subject matter. In entering into this Agreement, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing. Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

23.2. This Agreement contains the entire understanding between the parties and supersedes all previous agreements and arrangements (if any) whether express or implied. Any such agreements and arrangements will be deemed to have been terminated by mutual consent and there are no promises, terms, conditions or obligations oral or written, express or implied other than those contained in this Agreement

24. General

24.1. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise any party to act as agent for any other, or create an employee-employer relationship, and no party shall have authority to act in the

name or on behalf of or otherwise to bind any other in any way or to hold itself out in its advertising or otherwise in any manner which would indicate or imply any such relationship with the other unless expressly provided otherwise in this Agreement.

24.2. Unless expressly so agreed, no modification or variation of this Agreement shall constitute or be construed as a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver, and the rights and obligations of the parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.

24.3. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

Schedule 1

The PI Platform Support SLA Support and Service Levels

- 1.1 As part of the Pi Platform Services Intelligent Positioning will support the Solution as set out in this Schedule.
- 1.2 Intelligent Positioning will provide the client with Support during Live Support Hours which are Monday to Friday 9.00 a.m. to 5.30 p.m. (GMT or BST according to season) but excluding the 8 UK bank holidays.
- 1.3 Hours outside of Live Support Hours are termed Off Hours Support.

2. **The Support Services will comprise:**
 - 2.1 Helpdesk support. The Client must telephone or email the helpdesk who will acknowledge the request and initiate the support process within the Response Time.
 - 2.2 The helpdesk will then identify and allocate appropriate resources to deal with the support request. The helpdesk will assign a Severity Level to each Support request.
 - 2.3 Intelligent Positioning will escalate the support request as required.
 - 2.4 Response times depend upon the incident severity and details are set out in the attached chart.
 - 2.5 The provision of support is on a remote off site basis from Intelligent Positioning's offices. Intelligent Positioning will support the Solution in accordance with the service levels set out below:-

Severity Level of Fault	Definition	Helpdesk Response Time	Escalation Time
1	Business critical failure:- An error in or failure of the Solution that: <ul style="list-style-type: none">• Materially impacts the Client's business; or• Disables major functions of the Solution.	2 working hours	2 working hours
2	System defect with workaround:- <ul style="list-style-type: none">• Critical error in the Solution for which workaround exists; or• A non-critical error in the Solution that affects the operation of the Client's business.	8 working hours	8 working hours
3	Minor error:- <ul style="list-style-type: none">• An isolated or minor error in the Solution that does not significantly affect its functionality; or• Disables only certain non-essential functions.	8 working hours	16 working hours

- 2.6 The parties may agree in writing to reasonable extensions of service level response times.
- 2.7 Intelligent Positioning will give the Client regular updates of the nature and status of its efforts to correct any fault.

3. **Escalation Process**

3.1 Clients must contact support using one of the following methods: a) telephoning the support during Live Support Hours department on 0203 371 3935 (b) email support@pi-datametrics.com (c) using the “report a problem” feature within the application.

3.2 A support representative will provide an initial response within the timeframe outlined in section 2.5. If the support representative is unable to provide a resolution or conclusive response within the escalation time listed in section 2.5, the issue will be escalated to 2nd line support.

4. **Support Services not Included**

The support services provided by Intelligent Positioning under this Agreement shall not include the following services, which may be available on request at additional charge.

4.1 The making of any change or alteration to the Software, other than to correct a fault.

4.2 Supply of new versions of the Software which have enhanced features or new modules (as distinct from updates to existing functionality).

4.3 Enhancements developed for the Client by Intelligent Positioning at its request.

5. **Client’s Support Obligations**

The Client agrees with Intelligent Positioning to:

5.1 To operate the Software in a professional and prudent manner and in accordance with any operating manuals supplied by Intelligent Positioning.

5.2 To have on-site personnel trained in the use of the Software unless otherwise agreed.

6. **Service Availability and Maintenance**

6.1 Intelligent Positioning guarantees system availability during live support hours of 09.00 to 17.30 UK time over any calendar month at 99%, excluding planned maintenance.

6.2 Where possible, Intelligent Positioning will provide at least 48 hours notice of any planned maintenance during live support hours.

6.3 Intelligent Positioning will undertake unscheduled maintenance during Off Hours Support time providing no less than 4 hours advance notice where possible, apart from during the maintenance window of 01.00 to 05.00 UK time on Tuesdays.