



Pi Datametrics

US Terms and Conditions

Web V1

Background

This agreement, which comprises the Order Form (as defined below) and these Terms and Conditions (together, the "Agreement") is between the Person identified as Subscriber on the Order Form ("Subscriber") and Intelligent Positioning Inc, Intelligent Positioning Inc Registered office: National Registered Agents, Inc, 160 Greentree Drive, Suite 101, Dove, Delaware 19904 , and is effective as of the effective date set forth in the Order Form (the "Start Date"). These Terms and Conditions prevail over any of Subscriber's general terms and conditions regardless whether or when Subscriber has submitted its request for proposal, order, or such terms. Provision of services to Subscriber does not constitute acceptance of any of Subscriber's terms and conditions and does not serve to modify or amend these Terms and Conditions. Each of Subscriber and Intelligent Positioning is a "Party" and together, are the "Parties."

WHEREAS, Intelligent Positioning provides certain online search engine optimization ("SEO") platform services, and Subscriber desires to engage Intelligent Positioning to provide those services to Subscriber in accordance with the provisions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS

1.1. "Affiliate" of a Party means any Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with that Party (but only while the Person meets those requirements).

1.2. "Business Day" means any day other than a Saturday, Sunday or bank holiday when banks in London are open for business.

1.3. "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 or services.

1.4. "Control" means the right to exercise, directly or indirectly, the power to direct or cause the direction of the affairs, policies or management of a Person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

1.5. "Consulting Services" means advice on strategy and SEO exploitation.

1.6. "Data" means the data or information in whatever form owned or controlled by Intelligent Positioning and held on the database made available to Subscriber as part of the Services.

1.7. "Derived Data" means any Data Manipulated to such a degree by Subscriber 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.

1.8. "Intellectual Property" means (a) patents, inventions, and discoveries; (b) trademarks, service marks, domain names, social media user names, trade dress and trade names, including the goodwill connected with the use thereof and symbolized thereby; (c) copyrights, moral rights, works of authorship (including Software), proprietary designs, and rights in data and databases; (d) confidential and proprietary information, including trade secrets and invention rights; (e) rights of privacy and publicity; (f) registrations and applications for any of the foregoing in (a)-(e); and (g) all other proprietary rights.

1.9. "Intelligent Positioning Maintenance" means (a) maintenance conducted from [●] am Saturday until [●] am Monday (London time) that is necessary to perform preventative and other routine system maintenance functions, (ii) any maintenance that is critical and cannot be reasonably delayed ("Priority Maintenance").

1.10. "IT Systems" hardware, software, communications equipment and lines, and all other information technology and communications equipment, systems and networks.1.11.

"Manipulate" means to combine or aggregate the Data with other data or information or to adapt the Data.

1.12. "Order Form" means the order form between the Parties.

1.13. "Person" means an individual, partnership, firm, corporation, limited liability company, joint venture, association, trust, unincorporated organization, or other legal entity or organization.

1.14. "Solution" means the Intelligent Positioning software known as Pi Platform.

2. ACCESS/LICENSE RIGHTS

2.1. Services. Subscriber hereby engages Intelligent Positioning to provide to Customer the following services (the "Services"):

- (a) The configuration, hosting, management and operation of the Solution for remote electronic access and use;
- (b) Support Services (as defined in Section 2.8); and
- (c) Consulting Services.

2.2. Access to Services.

Subject to the terms of this Agreement, Intelligent Positioning hereby grants Subscriber, during the Term, a worldwide, non-exclusive, non-assignable, non-sublicensable right to access and use the

Solution. The Solution may be accessed and used by any employee or service provider of Subscriber or its Affiliates authorized by Subscriber to access the Solution (each such employee, an "Authorized User"). Each Authorized User will be given individual access credentials, and Subscriber shall ensure that its Authorized Users do not share those access credentials with any other Person. If Subscriber desires to terminate the access rights of any Authorized User and transfer those rights to another of Subscriber's or its Affiliates' employees or service providers, Subscriber shall notify Intelligent Positioning, and Intelligent Positioning shall promptly issue a new set of access credentials for that new employee, which upon receipt of those access credentials will be considered an Authorized User. Subscriber shall implement and maintain reasonable control procedures and information and systems security measures and technology to prevent unauthorized access to or use of the Services. Subscriber acknowledges that Intelligent Positioning may suspend an Authorized User's use of the Services without notice if Intelligent Positioning determines in its sole discretion that Subscriber or any Authorized User is in breach of any provision of this Agreement, with reinstatement to occur upon proven compliance with this Agreement.

2.3. Configuration by Subscriber.

Subscriber may configure and personalize the Solution to meet its requirements, including by setting:

- (a) Targets for SEO achievement;
- (b) Assessment of SEO scores in relation to competitors;
- (c) Different access levels for different levels of Authorized Users;
- (d) Email alert parameters; and
- (e) Different communities within Subscriber's organization.

2.4. Grant of License.

Subject to the terms of this Agreement, Intelligent Positioning hereby grants to Subscriber, during the Term, a worldwide, non-exclusive, non-assignable, non-sublicensable right to:

- (a) use any user guide or similar documentation relating to the Solution that Intelligent Positioning provides to Subscriber, as revised from time to time (the "Documentation");
- (b) access, view and Manipulate Data and create Derived Data;
- (c) store the Data and Derived Data on the Solution; and
- (d) otherwise use the Data in connection with SEO.

2.5. Reservation of Rights.

Intelligent Positioning reserves all rights in and to the Services, the Documentation and the Data (collectively, the "Intelligent Positioning Materials") not expressly granted to Subscriber pursuant to this Agreement. Subscriber acknowledges that as between the Parties, Intelligent Positioning is and will be the exclusive owner of all right, title and interest in the Intelligent Positioning Materials, including all Intellectual Property rights therein and thereto. Intelligent Positioning acknowledges that as between the Parties, Subscriber is and will be the exclusive owner of all right, title and interest in any information submitted to the Solution (other than information received by Subscriber from or on behalf of Intelligent Positioning) relating to Subscriber's configuration thereof in accordance with Section 1.2

2.6. Availability.

Intelligent Positioning shall use commercially reasonable efforts to make the Services available without interruption, except that the Services will not be considered unavailable if the unavailability results from (a) Intelligent Positioning Maintenance, (b) any use of the Services by Subscriber or the Authorized Users that is inconsistent with the terms of this Agreement, (c) any fault in or failure of Subscriber's IT Systems, (d) any failure or fluctuation of Subscriber's electrical supplies or systems or access to the Internet, (e) Subscriber's failure to follow reasonable backup and restoration procedures for its IT Systems, or (f) Subscriber's failure to comply with any of its obligations under this Agreement. Intelligent Positioning shall notify Subscriber promptly upon scheduling any Priority Maintenance.

2.7. Changes to the Services.

Intelligent Positioning may, from time to time, make changes to the Services that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of the Services, (ii) the competitive strength of or market for the Services, or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Intelligent Positioning shall use commercially reasonable efforts to ensure that any such change will not materially diminish the features or functionality of the Services.

2.8. Support Services.

Intelligent Positioning shall provide Subscriber with ongoing training, maintenance and support services in connection with the Solution, including telephone support, on- and off-site support, and revisions and updates of, and additions to functionality and accumulated changes to, the Service Software, as set forth in the "Order Form". Support hours are published at <https://www.pi-datametrics.com/support>

2.9. Consulting Services.

Subscriber may request that Intelligent Positioning provide to Subscriber Consulting Services, and upon receipt of such request, Intelligent Positioning shall provide a proposal and cost estimate to Subscriber with respect to such requested Consulting Services.

3. SUBSCRIBER OBLIGATIONS

3.1. Use Restrictions.

Except to the extent expressly stated otherwise in this Agreement, Subscriber shall not nor attempt to, nor permit, procure, enable or request any other Person to (a) alter, adapt, reproduce, modify, create derivative works based on, reverse engineer, decompile, reverse compile, reverse assemble, translate or disassemble all or any portion of the Intelligent Positioning Materials, (b) use the Intelligent Positioning Materials to (i) create, market or distribute any product or service that is competitive with the Services, or (ii) act as a service bureau on behalf of, or otherwise provide

processing or services support to, any Person, (c) transfer, sell, lease, license, sublicense, distribute, disclose, divulge or make available the Intelligent Positioning Materials to, or permit use of or access to the Intelligent Positioning Materials by, any Person other than Subscriber and Authorized Users, (d) enter into any agreement with, or make any representation to, any other Person that conflicts with, results in any breach of, or constitutes a default under, this Agreement, (e) remove, alter or obscure any Intellectual Property notice or other restrictive notice or legend contained or included in or on any Intelligent Positioning Materials, (f) contest, challenge or otherwise make any claim or take any action adverse to Intelligent Positioning's ownership of, or interest in, the Intelligent Positioning Materials, including the Intellectual Property rights therein, or (g) access the Services with any crawlers, bots or spiders, or otherwise "scrape" any Data obtained through the Services.

3.2. Compliance with Law.

Each Party shall comply with all applicable (a) laws, rules, regulations, rulings, judgments, orders, and approvals of any federal, state, local, national or supranational (i) government, (ii) governmental, legislative, regulatory, military, police, or administrative authority, agency, department, or commission, or (iii) court, tribunal, or judicial or arbitral body of competent jurisdiction (each, a "Governmental Authority") (collectively, "Laws"), in each case with respect to Subscriber's use of, and Intelligent Positioning's performance of, the Services and activities under this Agreement (as applicable).

3.3. Further Obligations.

Subscriber shall (a) provide Intelligent Positioning with all necessary cooperation and information needed by Intelligent Positioning to provide the Services and other Intelligent Positioning Materials under this Agreement, (b) ensure that its IT Systems comply with the technical requirements provided by Intelligent Positioning to Subscriber from time to time for use of the Services (such requirements are currently located at <http://www.pi-datametrics.com/support/technical-requirements/>), and (c) be solely responsible for procuring and maintaining its network connection and telecommunication links from its systems to Intelligent Positioning's IT Systems. Subscriber shall ensure that its Authorized Users comply with all terms of this Agreement as if they were parties to this Agreement in place of Subscriber; (ii) Subscriber is liable to Intelligent Positioning for breaches of the Agreement by its Authorized Users in the same manner as if Subscriber had breached the Agreement; and (iii) any breach of this Agreement by any of those Authorized Users is a breach of this Agreement by Subscriber

3.4. Viruses.

Each Party shall use commercially reasonable efforts to ensure that no virus or other malware ("Virus") is transmitted from its IT Systems or software to the IT Systems of the other Party, including through the use of Virus protection, detection and eradication technology consistent with leading industry standards and practices. If either Party identifies any such Virus, that Party promptly shall notify the other Party. If a Virus is introduced to the IT Systems of either Party by the other Party's use or provision of the Services (as applicable) the Party that introduced the Virus shall cooperate at its expense with the other Party to eradicate, and limit the adverse effects of, the Virus on that other Party and that other Party's IT Systems.

4. FEES AND TAXES

4.1. Payment Terms.

Subscriber shall pay the fees for the Services and for the rights granted pursuant to this Agreement in accordance with the Order Form. Intelligent Positioning may increase fees upon termination of the Initial Period and at any time thereafter by providing written notice to Subscriber at least 90 calendar days prior to the effective date of any such increase, and the Order Form will be deemed amended accordingly. Unless otherwise specified in the Order Form, all fees must be paid in U.S. dollars and are not subject to any deductions, credits or other set-offs. Any undisputed fees not paid when due will bear interest from the original due date until paid at a rate equal to the prime interest rate (as quoted in the Wall Street Journal, Eastern Edition) plus 2%.

4.2. Taxes.

All fees payable by Subscriber under this Agreement are exclusive of taxes and similar assessments. As between the Parties, Subscriber is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental or regulatory authority on any amounts payable by Subscriber hereunder, other than any taxes imposed on Intelligent Positioning's income. Subscriber shall directly pay any such taxes assessed against it and shall promptly notify Intelligent Positioning that those taxes have been paid, or, in the event those taxes are payable or collectable by Intelligent Positioning, Subscriber shall reimburse Intelligent Positioning for any such taxes.

5. TERM AND TERMINATION

5.1. Term.

This Agreement is effective as of the Effective Date and continues in effect for the license term set forth in the Order Form (the "Initial Term") unless earlier terminated pursuant to the provisions of this Agreement or as set forth in the Order Form (the period during which this agreement is effective, the "Term"). Upon the end of the Initial Term, the Agreement will automatically renew and continue in perpetuity unless earlier terminated pursuant to the provisions of this Agreement.

5.2. End of Initial Term.

Either Party may terminate this Agreement for any reason or no reason anytime after the end of the Initial Term by providing no less than 60 days' notice of termination to the other Party, effective at the earliest upon the end of the Initial Term.

5.3. Termination for Breach.

A Party may terminate this Agreement at any time by providing notice of termination to the other Party (the "Breaching Party") if the Breaching Party commits a material breach of this Agreement, and the breach continues unremedied for a period of 30 days after the Party provides notice to the Breaching Party describing the nature of the breach. Subscriber acknowledges that its failure to pay any fees promptly when due is deemed a material breach.

5.4. Termination for Bankruptcy.

A Party may terminate this Agreement at any time by providing notice of termination to the other Party if that other Party (a) becomes insolvent or unable to pay its debts as they mature, (b) makes an assignment for the benefit of its creditors, (c) is dissolved or liquidated, or takes any corporate action for those purposes, (d) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business, or (e) seeks relief or if proceedings are commenced against that other Party, or on its behalf, under any bankruptcy, insolvency or debtors' relief Law and those proceedings have not been fully stayed within seven days or vacated or set aside within 30 days after the commencement of those proceedings.

5.5. Effect of Termination.

Upon any termination of this Agreement, all rights and licenses granted to Subscriber under this Agreement terminate, and Subscriber shall (a) promptly cease exercising those rights and licenses, (b) at Intelligent Positioning's request, take all other actions necessary or appropriate to destroy or return to Intelligent Positioning all copies of the Documentation and any other Intelligent Positioning in Subscriber's or its Authorized Users possession, and (c) promptly pay to Intelligent Positioning any amounts due under this Agreement.

5.6. Survival.

Sections 2.5, 4.1, 5.5 and Articles 6-9 and 11-12 survive termination of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

6.1. Mutual Representations.

As of and at all times after the Effective Date, each Party represents and warrants that (a) it is duly organized and in good standing under the Laws of the jurisdiction of its organization, (b) it has all requisite power and authority (corporate or otherwise) to execute, deliver and perform its obligations under this Agreement, and (c) its execution, delivery and performance of this Agreement (i) have been duly authorized by all necessary action on its part and (ii) do not and will not: (A) violate, conflict with or result in the breach of any provision of its charter or by-laws (or similar organizational documents), or (B) conflict with, result in any breach of, constitute a default (or event which with the giving of notice and/or lapse of time would become a default) or require any consent under, or give any other Person any right to terminate, amend, accelerate, suspend, revoke or cancel, any other agreement to which it is a party or by which it is bound.

6.2. Intelligent Positioning Representations.

Intelligent Positioning represents and warrants to Subscriber that to Intelligent Positioning's knowledge, Intelligent Positioning has all rights, permissions and licenses necessary to provide the Intelligent Positioning Materials to Subscriber.

6.3. Subscriber Representations.

Subscriber represents and warrants to Intelligent Positioning that Subscriber has all rights, permissions and licenses necessary in any data submitted to the Solution and Intelligent Positioning.

6.4. DISCLAIMER.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1 and 5.2, THE INTELLIGENT POSITIONING MATERIALS AND ALL SEARCH RESULTS ARE PROVIDED "AS IS" AND INTELLIGENT POSITIONING HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND INTELLIGENT POSITIONING SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, (a) INTELLIGENT POSITIONING MAKES NO WARRANTY OF ANY KIND THAT THE INTELLIGENT POSITIONING MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE; AND (b) INTELLIGENT POSITIONING DISCLAIMS ALL LIABILITY ARISING FROM OR RELATING TO DECISIONS MADE BY SUBSCRIBER OR ANY AUTHORIZED USER BASED ON USE OF THE SERVICES.

7. LIMITATION OF LIABILITY

7.1. LIMITATION OF LIABILITY.

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL INTELLIGENT POSITIONING OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE INTELLIGENT POSITIONING MATERIALS, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, INACCURATE OR INCOMPLETE RESULTS OBTAINED FROM THE SERVICE, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY.

(b) IN NO EVENT WILL INTELLIGENT POSITIONING'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', OR SUBSCRIBER'S COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID TO INTELLIGENT POSITIONING DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(c) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION

WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) THE LIMITATIONS CONTAINED IN THIS ARTICLE (i) WILL NOT LIMIT THE LIABILITY OF SUBSCRIBER WITH RESPECT TO FEES PAYABLE TO INTELLIGENT POSITIONING UNDER THIS AGREEMENT AND (ii) APPLY EVEN IF THE SUBSCRIBER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

8. INDEMNITY

8.1. Indemnification by Subscriber.

Subscriber shall indemnify and defend Intelligent Positioning and its directors and officers from and against any and all damages, expenses (including attorneys' fees and court costs), losses, liabilities, obligations, claims, demands, suits, actions, investigations, proceedings, and causes of action (collectively, "Losses") arising out of or relating to any third-party claim to the extent the claim arises out of or relates to (i) Subscriber's or Authorized Users' access to or use of any Intelligent Positioning Materials, (ii) Subscriber's breach of this Agreement, or (iii) any IP Claim to the extent it is a Subscriber IP Claim; except in each case for any Losses for which Intelligent Positioning is obligated to defend and indemnify Subscriber pursuant to Section 7.2.

8.2. Indemnification by Intelligent Positioning.

Subject to Section 7.3, Intelligent Positioning shall indemnify and defend Subscriber from and against all Losses arising out of or relating to any third-party claim that any of the Intelligent Positioning Materials as provided by Intelligent Positioning to Subscriber infringe the Intellectual Property rights of that third party (each, an "IP Claim"). Subscriber acknowledges that this Article states Intelligent Positioning's entire responsibility and liability and Subscriber's sole and exclusive remedy for any actual or alleged infringement of third-party Intellectual Property rights in connection with this Agreement.

8.3. Exclusions.

Intelligent Positioning has no obligation to indemnify or defend Subscriber for any IP Claim to the extent it arises out of or relates to (a) Subscriber's use of the Intelligent Positioning Materials in combination with materials, software, Intellectual Property or services not furnished or approved by Intelligent Positioning, where there would be no basis for the IP Claim but for the combination, (b) any breach of this Agreement by Subscriber, (c) Subscriber's improvement, modification or enhancement of, or creation of any derivative work based on, any Intelligent Positioning Materials, (d) Subscriber's failure to implement a work-around, release, update or other modification to or for the Intelligent Positioning Materials as provided or directed by Intelligent Positioning, or (e) Subscriber's use of the Intelligent Positioning Materials after receiving notice of the alleged or actual infringement (the IP Claims described in (a)-(e) are "Subscriber IP Claims").

8.4. Mitigation.

In the defense, settlement or avoidance of any IP Claim, and in addition to but not in lieu of any other obligation set forth in this Article, Intelligent Positioning may, at its option and (subject to

Subscriber's obligations under Section 7.1) its expense, (a) replace or modify any allegedly infringing Intelligent Positioning Materials with non-infringing items and/or services that are reasonably comparable to the Intelligent Positioning Materials being replaced, and/or (b) obtain a license for Subscriber to continue using and receiving any of the allegedly infringing Intelligent Positioning Materials. If Intelligent Positioning determines in its good-faith business judgment that the remedies set forth in clauses (a) and (b) in the foregoing sentence are not available on commercially reasonable terms, Subscriber shall stop using and return to Intelligent Positioning all allegedly infringing Intelligent Positioning Materials, and Intelligent Positioning may stop performing all allegedly infringing Services.

8.5. Indemnification Procedure.

Each Party (the "Indemnified Party") shall give the other Party (the "Indemnitor") prompt notice of any demand by the Indemnified Party for indemnification under this Article (a "Claim"), as well as copies of any papers served on the Indemnified Party relating to that Claim, but the Indemnified Party's failure to provide or delay in providing that notice or those copies will not release the Indemnitor from its obligations under this Article, except to the extent the failure or delay materially prejudices the Indemnitor. The Indemnitor has the exclusive right to conduct the defense of any Claim and any negotiations for its settlement, except that (a) the Indemnitor may not bind the Indemnified Party to any agreement, or otherwise prejudice or impair the Indemnified Party's rights, without the Indemnified Party's prior written consent, which the Indemnified Party may not unreasonably withhold or delay, and (b) the Indemnified Party (i) shall assist the Indemnitor in its defense of any Claim, at the Indemnitor's request and expense, (ii) may participate at its expense in the Indemnitor's defense of or settlement negotiations for any Claim with counsel of the Indemnified Party's own selection, and (iii) may, at its option and the Indemnitor's expense, and on notice to the Indemnitor, conduct the defense of and any settlement negotiations for any Claim in place of the Indemnitor if the Indemnitor fails to promptly defend the Claim as required in this Article. At the Indemnified Party's request and the Indemnitor's expense, and in addition to the Indemnitor's other obligations under this Agreement, the Indemnitor shall assist the Indemnified Party with the defense of any Claim for which Indemnified Party conducts the defense under this Section.

9. CONFIDENTIALITY

9.1. Confidential Information.

Subject to Section 8.3, "Confidential Information" of a Party ("Discloser") means all confidential or proprietary information of, held by, or concerning Discloser or its personnel, licensors, or potential or actual customers, whether in verbal, written, electronic, or other form, including information concerning unique products, commercial, financial and technical information, data, metadata, documents, technology, computer systems and databases, trade secrets, know-how, source code, and computer, data processing and communications architectures, systems, applications, programs, and routines, whether (i) disclosed by or on behalf of Discloser to the other Party ("Recipient"), or (ii) obtained by Recipient in any other manner including through (A) observing or accessing Discloser's business activities, documents or materials, or (B) communications with Persons authorized by Discloser to communicate with, or otherwise provide information to, Recipient concerning Discloser or the Services. Discloser's Confidential Information includes all documents and other materials Recipient or its personnel generate to the extent describing, summarizing, commenting on, or otherwise containing any of Discloser's information described in

this Section. Intelligent Positioning's Confidential Information includes the Intelligent Positioning Materials.

9.2. Obligations.

Recipient shall maintain in confidence all Confidential Information and protect Confidential Information from any unauthorized disclosure, access, use, destruction, alteration or loss ("Information Loss"), exercising at least the same degree of care as Recipient exercises for its own confidential information, but not less than a reasonable degree of care. Subject to Section 8.4, Recipient may not, nor permit any Person to (i) use or copy Confidential Information except as expressly permitted in this Agreement, or (ii) disclose Confidential Information to any Person other than Recipient's personnel who require the Confidential Information to act on Recipient's behalf in connection with performing its obligations or exercising the rights granted to Recipient in this Agreement (including, with respect to Subscriber, the Authorized Users) ("Authorized Persons"). Recipient (A) shall procure that its Authorized Persons with access to Confidential Information comply with this Article 8 as if they were parties to this Agreement in place of Recipient, and (B) is liable to Discloser for the failure of Recipient's Authorized Persons to comply with this Article to the same extent that Recipient would have been had Recipient failed to comply.

9.3. Exceptions.

"Confidential Information" excludes information that (a) is or becomes generally available to and known by the public, other than due to Recipient's breach of this Article, (b) Recipient rightfully possessed without a duty of confidentiality before obtaining it from Discloser, (c) Recipient received on an unrestricted basis from a source unrelated to either Party and not under a duty of confidentiality with respect to the information, or (d) Recipient developed independently of the disclosed information and for which Recipient provides documentary evidence maintained contemporaneously with the development that verifies the development was independent, except that the Intelligent Positioning Materials are Intelligent Positioning's Confidential Information notwithstanding any independent development by or on behalf of Recipient.

9.4. Required Disclosure.

Recipient shall to the extent permitted by Law, (a) notify Discloser within three calendar days if a Law requires, or a Governmental Authority requires or requests, that Recipient disclose Discloser's Confidential Information and (b) use reasonable efforts to allow Discloser an opportunity to seek injunctive relief from, or a protective order with respect to, the contemplated disclosure. If notification to the Discloser is not permitted by Law, or if it is permitted and that relief or order is not obtained, Recipient (i) may disclose only that portion of Discloser's Confidential Information that Recipient's counsel advises is not subject to privilege and must be disclosed, and (ii) shall, at Discloser's expense, cooperate with Discloser's efforts to the extent permitted by Law to ensure the disclosed Confidential Information is treated in a confidential manner after disclosure.

9.5. Permitted Use of Information.

Notwithstanding any other provision of this Agreement, Intelligent Positioning may (a) monitor use of the Services to (i) determine Subscriber's compliance with the terms of this Agreement and (ii) provide support and other requested Services, (b) utilize any Subscriber information and data on a confidential basis in connection with Intelligent Positioning's development of any products,

strategies or services, (c) anonymize and/or de-identify any Subscriber information and data and aggregate that information and data with other information and data for any further use or purpose (including for distribution to the public), and (d) use any information gathered by Intelligent Positioning in connection with providing the Services as is necessary to comply with applicable Laws.

9.6. Unauthorized Disclosure.

Each Party acknowledges that (a) the other Party's Confidential Information is valuable to such Party, and any Information Loss will cause such Party irreparable injury, and (b) the remedies at law for any Information Loss are inadequate and the damages resulting from any breach of this Article may not readily be measured in monetary terms. Without limiting any of either Party's other rights and remedies, (i) if either Party becomes aware of an actual or threatened Information Loss, such Party shall promptly notify the other Party and cooperate with such Party to regain possession of its Confidential Information and prevent any further Information Loss, and (ii) if there is an actual or threatened Information Loss, such Party may seek any injunctive or other equitable relief that a court of competent jurisdiction deems proper (including an order restraining any threatened or future Information Loss), on use of affidavit evidence or otherwise, and without furnishing proof of actual damages or posting a bond or other surety.

9.7. Duration; Conflict.

Each Party's obligations under this Article regarding the other Party's Confidential Information terminate two years after the end of the Term, except that Recipient's obligations survive in perpetuity for Discloser's Confidential Information that is a trade secret. If a provision in this Agreement conflicts with a provision in any non-disclosure agreement, confidentiality agreement or similar agreement between the Parties, the provision in this Agreement governs to the extent of the conflict.

9.8. Publicity.

Notwithstanding anything in this Article to the contrary, Intelligent Positioning may (a) issue a press release or other public announcement concerning the Services and other arrangements contemplated by this Agreement, subject to Subscriber's approval, which Subscriber may not unreasonably withhold or delay, and (b) include Subscriber's name and logo in its lists of Intelligent Positioning's current or former customers on Intelligent Positioning's website and in its promotional and marketing materials.

10. FORCE MAJEURE

10.1. Force Majeure.

If and to the extent that a Party's (the "Hindered Party") performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by an event or circumstance beyond the reasonable control of that Hindered Party, provided that that Hindered Party is without fault in causing or failing to prevent that event or occurrence, and including (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, diseases, epidemics or elements of nature or acts of God, (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders,

rebellion or sabotage, (c) declarations of states of emergency by any Governmental Authorities, (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful, (e) failures or fluctuations in electrical power or telecommunications service or equipment, expropriation, condemnation of facilities or destruction, in whole or part, of the equipment or property necessary to perform the Services, (f) acts or omissions of a third party network operator, or (g) delays or failures caused by third party non-performance (each, a "Force Majeure Event"), and that non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the Hindered Party will be excused for that non-performance, hindrance or delay of those obligations affected by the Force Majeure Event for as long as that Force Majeure Event continues, on condition that the Hindered Party shall, subject to the cooperation of the other Party, continue to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Hindered Party shall immediately notify the other Party of the occurrence of any Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. As soon as reasonably possible after the cessation of the Force Majeure Event, the Hindered Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement. The Hindered Party will not be deemed to be in breach of this Agreement, or otherwise be liable to the other Party by reason of any delay in performance or non-performance of any of its obligations to the extent that that delay or non-performance is due to a Force Majeure Event of which it has notified the other Party pursuant to this Section and the time for performance of those obligations shall be extended accordingly. Further, Subscriber shall not be responsible for payment of any amounts if Intelligent Positioning is unable to perform due to a Force Majeure Event. Subscriber may terminate this Agreement immediately upon notice to Intelligent Positioning in the event a Force Majeure Event involving Intelligent Positioning occurs and continues to exist for a period of 14 consecutive days.

11. GOVERNING LAW AND DISPUTES

11.1. Governing Law.

This Agreement (including this Section), any dispute, claim or controversy between the Parties arising out of or relating to this Agreement or the performance of the Services, whether in contract, tort or otherwise (each, a "Disputed Matter"), and the Parties' rights, remedies and obligations under this Agreement, are to be construed in accordance with and governed by the Laws of the State of Delaware applicable to agreements made and to be wholly performed in that state by Persons residing or having their principal places of business therein, without giving effect to the State of Delaware's conflict of laws rules to the extent those rules would require applying another jurisdiction's Laws. The Parties exclude the application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods. The Parties may commence an action, suit or proceeding arising out of or relating to this Agreement or the performance of the Services in, and hereby consent to the jurisdiction of, the federal and state courts located in the County of New Castle within the State of Delaware.

11.2. Dispute Resolution.

The Parties shall cooperate in good faith to resolve any Disputed Matter within 90 days after a Party notifies the other Party of the Disputed Matter (the "Resolution Period"). The Parties acknowledge that their discussions and efforts during the Resolution Period to resolve a Disputed Matter are settlement discussions under applicable rules of evidence and without prejudice to either Party's

legal position. In the event the Parties are not able to resolve a Disputed Matter by the conclusion of the Resolution Period, either Party may commence an action, suit or proceeding in accordance with Section 10.1. Solely for purposes of this Section, "Disputed Matters" excludes claims for (i) equitable relief, (ii) indemnification under 7, and (iii) that a Party has infringed, misappropriated or otherwise violated the other Party's Intellectual Property rights.

12. Miscellaneous

12.1. Entire Agreement.

This Agreement (including all Schedules to this Agreement) constitutes the whole agreement between the Parties and supersedes all previous or contemporaneous discussions, correspondence, negotiations, arrangements, understandings and agreements between the Parties with respect to its subject matter. If a provision in an Order Form conflicts with any other provision in this Agreement, the former governs to the extent of the conflict. If a provision in a Schedule conflicts with any provision in these Terms and Conditions, the former governs to the extent of the conflict.

12.2. Assignment.

Subscriber may not assign, delegate or otherwise transfer this Agreement or any of its rights, remedies or obligations under this Agreement (including by forward or reverse merger, consolidation, dissolution or operation of Law, and whether voluntarily or by a Governmental Authority's action or order) without Intelligent Positioning's prior written consent, which Intelligent Positioning may not unreasonably withhold, except that Subscriber may assign, delegate, or transfer this Agreement and any of its rights or obligations under this Agreement without Intelligent Positioning's consent to (a) an Affiliate or (b) an acquirer of all or a majority of Subscriber's equity interests, assets, or business to which this Agreement relates (including by a merger, consolidation, or operation of Law), on condition that such acquirer is not a competitor of Intelligent Positioning. Any purported assignment, delegation or other transfer in contravention of this Section is void. Subscriber acknowledges that its assignment, delegation or other transfer of this Agreement will not relieve Subscriber of its obligations under this Agreement. Intelligent Positioning may assign, delegate or otherwise transfer this Agreement or any of its rights, remedies or obligations under this Agreement to (i) an Affiliate or (ii) an acquirer of all or a majority of Intelligent Positioning's equity interests, assets, or business to which this Agreement relates (including by a merger, consolidation, or operation of Law). This Agreement binds and inures to the benefit of the Parties and their respective permitted assignees and successors.

12.3. Severability.

If a Governmental Authority of competent jurisdiction holds any provision of this Agreement to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by Law) or disregarding it (if not). If an unenforceable provision is modified or disregarded in accordance with this Section, all other provisions of this Agreement are to remain in effect as written, except that this entire Agreement will be unenforceable if modifying or disregarding the unenforceable provision affects the economic and legal substance of the transactions contemplated by this Agreement in a manner materially adverse to either Party.

12.4. Notices.

All notices, requests, claims and other communications between the Parties described in or otherwise regarding this Agreement must be in writing and be given or made (and will be effective on receipt) by delivery in person, by nationally recognized overnight courier service (with signature required and all fees prepaid), by facsimile (with confirmation of transmission), by e-mail (with telephonic confirmation or confirmation by another method set forth in this Section), or by registered or certified mail (postage prepaid, return receipt requested) to a Party at its address on the first page or at any other address of which that Party has notified the other Party in accordance with this Section.

12.5. Interpretation.

The descriptive headings in this Agreement are used solely for convenience and are not intended to affect its meaning or interpretation. The words “including,” “include,” and “includes” are not limiting and are to be read as if they were followed by the phrase “without limitation.” “Sole discretion” means, with respect to any determination to be made under this Agreement by a Party, the sole and absolute discretion of that Party, without regard to any standard of reasonableness or other standard by which the determination of that Party might be challenged. “Commercially reasonable efforts” means, with respect to a given obligation, the efforts that a reasonable and prudent Person desirous of achieving a result would use in similar circumstances to perform that obligation as promptly as possible consistent with its normal business practices and good-faith business judgment, including the incurrence of reasonable immaterial expenditures or liabilities. Unless stated otherwise, all references to a date or time of day in this Agreement are references to that date or time of day in London.

12.6. Third-Party Beneficiaries.

Except to the extent stated otherwise in this Agreement, nothing in this Agreement confers any legal or equitable right, benefit or remedy upon any Person other than the Parties.

12.7. No Waiver.

A Party’s failure to enforce any provisions of or rights deriving from this Agreement does not waive those provisions or rights, or that Party’s right to enforce those provisions or rights. Except to the extent stated otherwise in this Agreement, each Party’s rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies available at Law or in equity.

12.8. No Presumption.

The Parties acknowledge that the provisions of this Agreement are the language the Parties chose to express their mutual intent and hereby waive any remedy and the applicability of any Law that would require interpretation of any claimed ambiguity, omission or conflict in this Agreement against the Party that drafted it.

12.9. Counterparts.

The Parties may execute this Agreement (including any Schedule) (a) in multiple counterparts, each of which when executed by a Party's authorized representative is an original counterpart and all of which together constitute one agreement, and (b) by (i) delivering in accordance with Section 11.4 an original counterpart of this Agreement bearing the handwritten signature of an authorized representative of the Party intending to be bound, or (ii) attaching a scanned image of that signed counterpart, to an email or other electronic communication sent to the other Party's authorized representative.

12.10. Amendment.

This Agreement may be amended or modified only by a written instrument that refers specifically to this Agreement and is executed in accordance with Section 11.9, but "written instrument" does not include the text of e-mails or similar electronic communications.

12.11. Independent Relationship.

Both Parties are independent contractors under this Agreement. Nothing herein creates an employment, agency, joint venture or partnership relationship between the Parties hereto or any of their personnel, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.