

# Pi Datametrics

## Terms and Conditions

### Background

Intelligent Positioning has developed the Solution which is proprietary software Pi Platform which is Cloud hosted. This enables the User to decide and set its own parameters for the analysis and diagnosis of search engine optimisation performance . The User 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 User 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 strategy and SEO exploitation which may be provided by Intelligent Positioning if requested by the User at additional cost (and which is not part of the Services).
Data	means the data or information in whatever form owned by Intelligent Positioning and held on the database made available to the User as part of the Services. Data is anonymised and does not include any Personal Data.
Data Centre	means the physical location where the Servers upon which the Solution is hosted are located.
Data Protection Requirements	means the Data Protection Act 1998, the Data Protection Directive (94/46/EC) and all applicable laws and regulations relating to the processing of personal data.

Derived Data	means any Data Manipulated 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.
Effective Date	means the start date of this Agreement.
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.
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.
Personal Data	means Personal Data as defined by the Data Protection Act 1998.
the Purpose	means the use of the Solution and the Data for search engine optimisation.
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 Platform use of which is licensed to the User on the terms of this Agreement.
Support	means maintenance and Support for the Solution details of which are set out in Schedule 2.
the Term	means the Term of this Agreement referred to in clause 7 and specified in Schedule 1.
Update	means any updates, improvements and fixes of the Solution issued by Intelligent Positioning periodically.
User	means any employee of the Customer authorised by the Customer to access and use the Services, using his own unique identifier provided by the Supplier.

## 2. Services

- 2.1. Intelligent Positioning shall provide the Services under the terms of this Agreement which comprise:
  - 2.1.1. Hosting the Solution on the Servers.
    - 2.1.1.1. Configuring the Solution for unique use by the User.
    - 2.1.1.2. Licensing use of the Solution by the User.
    - 2.1.1.3. Training, technical assistance and provision of Support in relation to the Solution.
  - 2.1.2. If the User requires additional Consultancy it shall notify Intelligent Positioning and Intelligent Positioning will provide a proposal and cost estimate for such Consultancy for agreement.

### **3. Solution Licence**

- 3.1. In consideration of the charges paid by the User, Intelligent Positioning grants to the User a non-exclusive licence for the Term to use the Solution.
- 3.2. There is no limit on the number of users who may access the Solution but all users must be employees of the User (or of an Associated Company of the User) and must use the User's primary domain name and email address.
- 3.3. The User 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.
- 3.4. The User may configure and personalise the Solution to meet its requirements. Amongst other matters the User may decide upon and set:
  - 3.4.1. Targets for SEO achievement.
  - 3.4.2. Assessment of SEO scores in relation to competitors.
  - 3.4.3. Different access levels for different levels of users.
  - 3.4.4. Email alert parameters.
  - 3.4.5. Different communities within the User organisation.
- 3.5. Configuration of the Solution is included within the cost of the Services in accordance with clause 2.1.2. Consultancy as to strategy is outside the definition of the Services provided under this Agreement and will be charged for separately if requested in accordance with clause 2.2.

### **4. Database Licence**

- 4.1. Intelligent Positioning grants to the User a non-exclusive licence for the Purpose only during the Term to:
  - 4.1.1. Access, view and Manipulate Data and create Derived Data.
  - 4.1.2. Store the Data and Manipulated Data on the Solution.
  - 4.1.3. Use the Data in relation to the Purpose.
- 4.2. The User shall not redistribute the Services or the Data or allow any third party to have the benefit of the Services or the Data.

### **5. Updates**

- 5.1. As part of the Services, Intelligent Positioning will Update the Solution regularly when maintenance releases are made available. Intelligent Positioning will ensure that Updates:
  - 5.2. Are configured for the User's Use; and
  - 5.3. Do not adversely affect the existing facilities or functions of the Solution.
  - 5.4. Where Intelligent Positioning release an update of the Solution with additional functionality, the User is entitled to access and use such functionality.
  - 5.5. Training for new releases can be provided on request via support quota allocated in an Order Form

### **6. Intelligent Positioning's Obligations**

- 6.1. Intelligent Positioning will undertake the Services with reasonable skill and care using professionally trained staff with appropriate qualifications.
- 6.2. Intelligent Positioning will 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.
- 6.3. Intelligent Positioning will use commercially reasonable endeavours to make the Solution available 24 hours a day 7 days a week except for:-
  - 6.3.1. Planned maintenance carried outside of the normal business hours of 09.00 – 17.30 Monday to Friday. Where possible, Intelligent Positioning

will provide the User with at least 4 hours advance notice of any planned maintenance.

- 6.3.2. Planned maintenance carried out within normal business hours, provided that the User has been given no less than 48 hours notice.
- 6.4. Intelligent Positioning will as part of the Services and at no extra cost to the User provide the User with Support during normal business hours. Details of standard Support are set out in Pi Platform Support SLA
- 6.5. 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 User undertakes at least the Minimum Training stated in the Order Form. Further training is available as required at the daily rate specified.
- 6.6. Intelligent Positioning will not access, store, distribute or transmit to the Solution any viruses or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.

## **7. User's Obligations**

- 7.1. The User 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 User 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.
- 7.2. The User 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.
- 7.3. There is no limit to the number of individual Users who may access the Solution, but the User must ensure that all Users are employees of the User's company (or of an Associated Company) and access the Solution from the User's primary domain name and email address.

## **8. Term, Charges and Payment**

- 8.1. This Agreement shall commence on the Effective Date and shall continue for the Term stated on the related Order Form. At the Expiry Date at the end of the Term this Agreement shall continue until either party serves written notice of intention to terminate on the other party giving no less than 60 days notice of termination. This does not affect the ability of either party to terminate in accordance with the provisions of clause 13 if appropriate.
- 8.2. All amounts and fees stated in this Agreement are exclusive of Value Added Tax which shall be added to Intelligent Positioning's invoices at the current rate at the time of invoicing.
- 8.3. Intelligent Positioning's invoices are due and payable 30 days after the invoice date. If Intelligent Positioning has not received payment in 5 days after the due date:
- 8.4. Intelligent Positioning shall be under no obligation to provide the Services whilst the invoice remains unpaid; and
- 8.5. 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.

## **9. Personal Data**

- 9.1. The User confirms that for the purposes of the Data Protection requirements and other relevant legislation the User is the Data Controller 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) supplied by Intelligent Positioning to the User, which the User must keep safe and confidential. You are responsible for all use of the Service made using such ID.

## **10. Intellectual Property Rights**

- 10.1. The User 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.
- 10.2. The User will own all Intellectual Property Rights in information that the User submits to the Service relating to the configuring of the Solution for unique use by the User.
- 10.3. Intelligent Positioning own all Intellectual Property Rights in all other data included in the Service, and in the Service itself. We grant the User a licence to use the results provided to the User using the Service for their own business purposes.

## **11. Confidentiality**

- 11.1. 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.
- 11.2. Intelligent Positioning may disclose the User's Confidential Information to Intelligent Positioning personnel directly involved in the provision of the Services and who need to know the information. Intelligent Positioning shall ensure that each of its personnel are aware of and comply with the confidentiality obligation.

## **12. Indemnity**

- 12.1. The User 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 the User's use of the Solution or the Services.
- 12.2. Intelligent Positioning shall defend and indemnify the User against any claim that any software or Data forming part of the Solution infringe any valid third party intellectual property right including copyright or database right, and shall indemnify the User for any amounts awarded against the User in judgment or settlement of such claims, provided that:
  - 12.2.1. Intelligent Positioning is given prompt notice of any such claim;
  - 12.2.2. The User provides reasonable co-operation to Intelligent Positioning in the defence and settlement of such claim, at Intelligent Positioning's expense; and
  - 12.2.3. Intelligent Positioning is given sole authority to defend or settle the claim.
- 12.3. In the defence or settlement of the claim, Intelligent Positioning may obtain for the User 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 User. Intelligent Positioning shall have no liability if the alleged infringement is based on:
  - 12.3.1. modification of such software or Data by the User or a third party with the User's consent other than Intelligent Positioning; or
  - 12.3.2. the User's use of such software or Data in a manner contrary to the instructions given to the User by Intelligent Positioning; or

- 12.3.3. the User's use of such software or Data after notice of the alleged or actual infringement from Intelligent Positioning or any appropriate authority.
- 12.4. Clauses 12.2 and 12.3 state the User's sole and exclusive rights and remedies and Intelligent Positioning's entire obligations and liability, for patent, copyright, database or other intellectual property infringement.

### **13. Termination**

- 13.1. 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:
  - 13.1.1. 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
  - 13.1.2. 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
  - 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.
  - 13.1.4. If the SLAs as detailed in Pi Platform Support SLA are not met, the Customer has the right to terminate the agreement with immediate effect
- 13.2. On termination of this agreement for any reason:
  - 13.2.1 any licence or other permissions granted to the User 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.

### **14. Liability**

- 14.1. This clause 14 sets out the entire financial liability of Intelligent Positioning (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the User in respect of:
  - 14.1.1. any breach of this agreement;
  - 14.1.2. any use made by the User of the Solution or the Services or any part of them; and
  - 14.1.3. any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this agreement.
- 14.2. Except as expressly and specifically provided in this agreement:
  - 14.2.1. the User assumes sole responsibility for results obtained from the use of the Services by the User; and
  - 14.2.2. all warranties, conditions and other terms implied by statute or common law are, excluded from this agreement.
- 14.3. Nothing in this agreement excludes the liability of Intelligent Positioning for:
  - 14.3.1. death or personal injury caused by Intelligent Positioning's negligence; or
  - 14.3.2. fraud or fraudulent misrepresentation.

- 14.4. In addition to liability under clause 14.3, Intelligent Positioning accepts liability for direct loss arising in contract or tort (including negligence or breach of statutory duty) out of the performance of the Services under the terms of this Agreement.
- 14.5. Intelligent Positioning shall not be liable whether in contract or in tort (including negligence or breach of statutory duty) for any special, indirect or consequential loss or expenses.
- 14.6. 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:-
- 14.6.1. £2m; or
  - 14.6.2. 200% of the price paid or payable by the User for all Services provided under this Agreement during the 12 month period immediately preceding any cause of action.

## **15. 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.

## **16. Waiver**

- 16.1. 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.
- 16.2. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

## **17. Assignment**

- 17.1. The User shall not, without the prior written consent of Intelligent Positioning, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 17.2. Intelligent Positioning may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **18. Third party rights**

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## **19. Notices**

- 19.1. Any notice given by a party under this Agreement shall be in writing and shall be:
- 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;
  - Sent by email to an email address notified for the purpose in this Agreement or notified as an amendment subsequently;
  - Any notice to be served upon the User by email must be sent to the User's contact email
  - Any notice to be served by email upon Intelligent Positioning must be sent to dan@intelligentpositioning.com
- 19.2. Any notice shall be deemed to have been received:
- If delivered by hand at the time the notice is left at the proper address.
  - 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.
  - If sent by email at 9.00 a.m. on the next Business Day after transmission.

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

## **20. Dispute Resolution**

- 20.1. 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.
- 20.2. If the parties cannot resolve a dispute in accordance with the procedure in clause 19.1 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 24.

## **21. Governing law and jurisdiction**

- 21.1. 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.
- 21.2. 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).

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