

## SAAS SUBSCRIPTION TERMS OF USE AGREEMENT

THIS SAAS SUBSCRIPTION TERMS OF USE AGREEMENT (“**AGREEMENT**”) IS A BINDING CONTRACTUAL AGREEMENT BETWEEN INSELLIGENCE, LLC, A FLORIDA LIMITED LIABILITY COMPANY WITH ITS PRINCIPAL BUSINESS ADDRESS AT 3822 LEAFY WAY MIAMI, FLORIDA 33133 (“**INSELLIGENCE**”) AND THE BUSINESS ENTITY IDENTIFIED AS THE SUBSCRIBER AT THE TIME OF PURCHASE OR ORDER OF INSELLIGENCE’S SERVICES (AS DEFINED BELOW) (“**SUBSCRIBER**”). EACH OF INSELLIGENCE AND SUBSCRIBER MAY BE REFERRED TO HEREIN AS A “**PARTY**” AND TOGETHER, THE “**PARTIES**”. THIS AGREEMENT GOVERNS THE SUBSCRIBER’S ACCESS TO AND USE OF THE SERVICES. BY CLICKING ON THE “I AGREE” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR ACCESSING THE SERVICES, THE SUBSCRIBER IS INDICATING ITS ACCEPTANCE AND AGREEING TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF SUBSCRIBER DOES NOT ACCEPT AND AGREE TO THE FOLLOWING TERMS AND CONDITIONS, THE SUBSCRIBER MUST NOT ACCESS THE SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A SUBSCRIBER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE SUBSCRIBER TO ALL OF THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES.

INSELLIGENCE MAY AT ITS SOLE DISCRETION CHANGE, ADD, OR DELETE PORTIONS OF THIS AGREEMENT AT ANY TIME ON A GOING-FORWARD BASIS. IT IS SUBSCRIBER’S RESPONSIBILITY TO CHECK THIS AGREEMENT FOR CHANGES PRIOR TO USE OF THE SERVICES, AND IN ANY EVENT SUBSCRIBER’S CONTINUED USE OF THE SERVICES FOLLOWING THE POSTING OF CHANGES TO THIS AGREEMENT CONSTITUTES SUBSCRIBER’S ACCEPTANCE OF ANY CHANGES. INSELLIGENCE WILL NOTIFY SUBSCRIBER OF ANY SUCH MATERIAL CHANGES BY POSTING NOTICE OF THE CHANGES ON THE SERVICES, AND/OR, IN INSELLIGENCE’S SOLE DISCRETION, BY EMAIL.

### 1. DEFINITION OF TERMS

The following terms have the following meanings:

- 1.1. “**Analytics Data**” means the insights, usage, and analytics data collected directly from Authorized Users or otherwise generated by the Services in connection with Subscriber’s and its Authorized Users’ use of the Services.
- 1.2. “**Applicable Data Protection Laws**” means the privacy, data protection and data security laws and regulations of any jurisdiction applicable to the Processing of Personal Data under this Agreement.
- 1.3. “**Authorized User**” means any employees, independent contractors, agents or representatives of Subscriber, subject to any Restrictions. For the avoidance of doubt, Consultants are not deemed Authorized Users.
- 1.4. “**Subscriber Content**” means any information, data, text, logos, pictures, or other materials or content provided by Subscriber in connection with Subscriber’s use of the Services, including but not limited to employee data, data provided by Subscriber from Subscriber’s customer relationship management software (“**CRM Data**”) or other data of Authorized Users provided directly by Subscriber. For the avoidance of doubt, Subscriber Content does not include Analytics Data.
- 1.5. “**Confidential Information**” means all information disclosed by one Party to the other in connection with this Agreement or otherwise obtained by the Receiving Party, which the receiving Party knew or reasonably should have known was the confidential information of the disclosing Party. Except for Personal Data, Confidential Information shall not include information that (i) is publicly available through no fault of the Receiving Party, (ii) is independently developed by the Receiving Party, or (iii) is rightfully obtained by the Receiving Party from independent sources free from any duty of confidentiality. Confidential Information shall include the terms and pricing in this Agreement, but not the fact that this Agreement has been signed, the identity of the Parties or the specific services purchased by Subscriber.
- 1.6. “**Data**” means Analytics Data and Personal Data.
- 1.7. “**Documentation**” means Inselligence’s on-line documentation, as updated and amended from time to time.
- 1.8. “**Feedback**” means feedback, suggestions, improvements, and recommendations regarding the Proprietary Items.

- 1.9. **“Order Form”** means Inselligence’s standard order form executed by both Parties that references this Agreement.
- 1.10. **“Personal Data”** means “personal data,” “personal information,” “personally identifiable information” or similar term defined in Applicable Data Protection Laws.
- 1.11. **“Proprietary Items”** means, collectively, the Services and Documentation, the visual expressions, screen formats, report formats and other design features of the Services and Documentation, all ideas, methods, methodology, Models, algorithms, formulae and concepts used in developing and/or incorporated into the Services or Documentation, all future modifications, revisions, updates, refinements, improvements and enhancements of the Services or Documentation, all derivative works based upon any of the foregoing, and all copies of all of the foregoing.
- 1.12. **“Process”** (including “Processed” and other variants of the term) means any operation or set of operations that is performed upon Personal Data or on sets of Personal Data, whether or not by automatic means, such as collection, collation, recording, organization, storage, adaptation or alteration, retrieval, consultation, analysis, interpretation, compilation, aggregation, use, disclosure by transmission, dissemination, viewing, copying, deleting, or otherwise making available, alignment or combination, blocking or erasure, or destruction.
- 1.13. **“Reports”** means the assessment and insights reports and recommendations generated through the use of the Services, including all Analytics Data and other data, information, or content therein.
- 1.14. **“Restrictions”** means the limitations or restrictions applicable to the Services, as presented at the time of ordering and/or purchase. Thereafter, Inselligence may update the Restrictions from time to time, provided that the Restrictions do not have a material adverse effect on the functioning of any features or functionality of the applicable Services. Further, Inselligence may update the Restrictions at the conclusion of any subscription term for the Services.
- 1.15. **“Inselligence’s Trademarks”** means Inselligence’s trademarks, trade names, logos, and designations.
- 1.16. **“Services”** means the limited access and use rights to the portions of Inselligence’s proprietary software as-a-service platform that is designed to provide sales analytics.

## 2. PILOT

- 2.1. **General.** During the period when Subscriber is receiving the Services under an evaluation license (“**Pilot Services**”), the terms and conditions of this Section 2 shall apply and those in Sections 3.1 (Subscription Rights), 3.5 (Inselligence Obligations), 4 (Payments), and 9.1 (Indemnity by Inselligence) (collectively, the “**Inapplicable Provisions**”) do not apply. Reference Section 3.1 (Subscription Rights) for the terms applicable to a commercial subscription to the Services.
- 2.2. **Evaluation License and Term.** Subject to the terms and conditions of this Agreement (excluding the Inapplicable Provisions), Inselligence hereby grants Subscriber and its Authorized Users a non-exclusive, non-transferable (except in connection with a permitted assignment) license (i) to access and use the Services in accordance with the Documentation and subject to any Restrictions solely for the purposes of internally evaluating the performance and functionality of the Services on an evaluation basis, subject to the pilot fees identified at the time of purchase or as set forth on any Order Form (including, using the Reports solely for Subscriber’s internal purposes) until the earlier of (a) thirty (30) days following the Effective Date (unless extended by Inselligence at its discretion) or (b) the date Subscriber elects to commence the commercial subscription (the “**Pilot Period**”).
- 2.3. **Conversion into Commercial License.** When the Pilot Period concludes, the evaluation license will automatically be converted into a commercial license as set forth in Section 3.1 (Subscription Rights), unless terminated by the Subscriber in Subscriber’s account settings prior to the expiration of the Pilot Period.
- 2.4. **Termination of Evaluation License.** The license in Section 2.2, all of Subscriber’s rights to use the Pilot Services, and this Agreement will terminate immediately in the event that Subscriber elects not to purchase the commercial subscription by terminating the

Agreement in Subscriber's account settings. Upon termination of the evaluation license, Subscriber shall promptly cease use of the Pilot Services and the Reports. All confidential information shall be returned or destroyed pursuant to Section 10.4.

- 2.5. **Disclaimer.** ANY DATA THAT SUBSCRIBER OR ANY OF ITS AUTHORIZED USERS ENTERS INTO THE SERVICES DURING THE PILOT PERIOD MAY BE PERMANENTLY LOST IF SUBSCRIBER ELECTS NOT TO PURCHASE THE SERVICES UNLESS SUBSCRIBER EXPORTS SUCH DATA BEFORE THE END OF THE PILOT PERIOD.

### 3. SUBSCRIPTION RIGHTS AND OBLIGATIONS

- 3.1. **Subscription Rights.** If Subscriber purchases a commercial license to the Services or if the evaluation license has converted into a commercial license pursuant to Section 2.3, subject to the terms and conditions of this Agreement including full payment of all applicable fees, Inselligence hereby grants to Subscriber and its Authorized Users a non-exclusive, non-transferable (except in connection with a permitted assignment) license (i) during the applicable Order Form term, to access and use the Services in accordance with the Documentation and subject to any Restrictions, and (ii) in perpetuity, to use the Reports solely for Subscriber's internal business purposes.
- 3.2. **Subscriber Content License.** Subscriber hereby grants Inselligence a fully paid, royalty-free, irrevocable, worldwide, non-exclusive and fully sublicensable right (including any moral rights) and license to (a) during the Term, use, distribute, reproduce, modify, adapt, perform, and display Subscriber Content for the purposes of operating, providing, enhancing, improving, supporting, and maintaining the Services for Subscriber, and (b) in perpetuity, use and otherwise exploit in any manner any Subscriber Content that does not contain personally identifiable information solely for the purpose of operating, improving, and enhancing the Services and any new services Inselligence creates. For the avoidance of doubt, Inselligence shall have the right to run any Subscriber Content (or Data described below) through Inselligence's machine learning and artificial intelligence tools in order to train and improve Inselligence's models and algorithms ("**Models**"), which Models may be used with other Subscribers and generally to provide Inselligence's products and services.
- 3.3. **Data.** Subscriber acknowledges and agrees that Inselligence may collect, retain, and use Data in any manner in compliance with Inselligence's privacy policy available at [www.inselligence.com](http://www.inselligence.com), provided that any disclosure of Analytics Data to third parties shall be in a form not directly attributable to or identified with Subscriber except as may be necessary solely for such third parties to provide services to Inselligence. Subscriber hereby agrees that, to the extent Subscriber provides to Inselligence or otherwise enables Inselligence to Process any Personal Data that is subject to Applicable Data Protection Laws, it is bound by Inselligence's form of data processing addendum available at [www.inselligence.com](http://www.inselligence.com) ("**DPA**"). If Subscriber has not entered into such DPA, Subscriber represents, warrants and covenants that no Personal Data Processed by Inselligence under this Agreement is subject to Applicable Data Protection Laws. Any Personal Data that is subject to Applicable Data Protection Laws shall be governed by the DPA. In the event of a conflict between any provision of the DPA and this Agreement, the provision providing the higher level of privacy or data protection shall govern.
- 3.4. **Subscriber Responsibilities.** Subscriber shall (a) be responsible for Authorized Users' acts and omissions in connection with their access to and use of the Services, (b) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Inselligence promptly of any such unauthorized access or use, (c) use the Services only in accordance with this Agreement and the Documentation and in compliance with all applicable laws, rules, and regulations, (d) reasonably cooperate with Inselligence as necessary for Inselligence to perform its obligations under this Agreement, and (e) be responsible for all Subscriber Content, including the accuracy thereof and all rights necessary to use, distribute, and otherwise disseminate such Subscriber Content (including, for the avoidance of doubt, the CRM Data) for the purposes contemplated under this Agreement. Subscriber represents and covenants that Subscriber will secure any necessary consents from its Authorized Users (i) in order to allow Inselligence to fulfill its obligations under this Agreement and (ii) to collect, use, and disclose Data in accordance with the terms of this Agreement and Inselligence's privacy policy.
- 3.5. **Inselligence Obligations.** Inselligence shall host, operate, maintain, and support the Services, including any Subscriber Content uploaded, posted, or otherwise transmitted to the Services by Subscriber or its Authorized Users. Inselligence shall provide to Subscriber standard support for the Services at no additional charge in accordance with Inselligence's standard support policies. Inselligence will use reasonable commercial efforts to make the Services available not less than 99.9% of the time in any given

month, subject to scheduled downtime and other parameters imposed by Inselligence's web service provider. Inselligence shall have no obligation to provide any additional services to Subscriber, including, training, implementation, or any support or maintenance in excess of Inselligence's standard support policy, unless Subscriber separately purchases such services. From time to time in accordance with Inselligence's generally applicable procedures, Inselligence may make available to Subscriber updates, upgrades, enhancements, and error corrections to the Services that Subscriber has purchased at no additional charge when such updates, upgrades, enhancements and error corrections are generally made available to its other Subscribers at no additional charge.

- 3.6. **Usernames and Passwords.** Subject to any Restrictions, Subscriber may register Authorized Users on the Service with e-mail addresses and passwords to enable Authorized Users to access the Services pursuant to this Agreement. Each e-mail address and password may only be used to access the Services during one (1) concurrent login session. Subscriber will ensure that each e-mail address and password issued to an Authorized User will be used only by that Authorized User. Subscriber is responsible for maintaining the confidentiality of all Authorized Users' passwords, and is solely responsible for all activities that occur under these accounts. Subscriber agrees: (a) not to allow a third party to use Subscriber's accounts at any time; and (b) to notify Inselligence promptly of any actual or suspected unauthorized use of an account or any other breach or suspected breach of this Agreement. Inselligence reserves the right to terminate any accounts that Inselligence reasonably determines may have been used by an unauthorized third party. Authorized User accounts and their associated e-mail addresses and passwords cannot be shared or used by more than one individual Authorized User, but an account may be reassigned from time to time to a new Authorized User who is replacing a former Authorized User who has terminated employment or otherwise changed job status or function and no longer uses the Services. Subscriber is solely responsible for all access to and use of the Services by its Authorized Users and all access to and use of the Services through any Authorized User's account.
- 3.7. **Restrictions.** Subscriber shall not (and shall not permit any Authorized User to) (a) make the Services available to any third party other than Authorized Users, (b) resell, lease, distribute, transfer or otherwise make available the Services on a time-sharing or service bureau basis, (c) provide Subscriber Content that is infringing, libelous, disparaging, or is otherwise unlawful or tortious material, or store or transmit material in violation of any third-party's proprietary or privacy rights, (d) use the Services to promote any unlicensed, unfair, or illegal activities or for deceptive or illegal purposes, (e) use the Services to store or transmit malicious code, (f) use or access the Services in any way that potentially harms, harms, or otherwise threatens the reputation, integrity, performance, or availability of Inselligence, any Inselligence Subscriber, the Services or any data therein, (g) attempt to gain unauthorized access to the Services, other Subscriber content, or any data stored or processed therein, (h) decompile, disassemble, or reverse engineer the Services, in whole or in part, except as permitted by applicable law, or (i) use or access any Proprietary Items to create (or have created) a competing or similar service. Inselligence may restrict or prohibit use or access to the Proprietary Items if Inselligence suspects such use or access is a breach of this Agreement, does not comply with the Documentation or any Restrictions, or is otherwise objectionable or threatens the reputation of Inselligence, any Inselligence Subscriber, or the Services or any data therein.

#### 4. PAYMENTS

- 4.1. **Fees and Expenses.** Subscriber shall pay to Inselligence, without offset or deduction, the then-current fees for the applicable Services and this Agreement. Inselligence reserves the right to increase the fees following the Initial Term, and each Renewal Term thereafter, but must provide notification of such increases at least thirty (30) days in advance of the Non-Renewal Notice Deadline (as defined below). Any subscription fees shall be due and payable on the Effective Date, and thereafter, on the monthly or yearly anniversary of the Effective Date, based on the subscription terms for the Services purchased. Any overages fees or other amounts shall be due and payable within thirty (30) calendar days after an invoice is issued by Inselligence.
- 4.2. **Taxes.** The fees and other amounts payable by Subscriber to Inselligence do not include any taxes of any jurisdiction that may be assessed or imposed upon the Proprietary Items, or otherwise, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon Inselligence's net income. Subscriber shall directly pay any such taxes assessed. Subscriber shall promptly reimburse Inselligence for any taxes payable or collectable by Inselligence (other than taxes based upon Inselligence's net income). If Subscriber has provided Inselligence with proof of its tax exempt status, then, in the event that Subscriber's tax exempt status should become altered, Subscriber shall be obligated to notify Inselligence immediately of any such modification and Subscriber shall become liable for all taxes as set forth above. In the event Subscriber fails to notify

Inselligence of any such change, Subscriber shall be liable for payment of any tax related penalties or interest assessed against Inselligence or Subscriber as a result of such Subscriber failure.

4.3. **Payment Terms.** Inselligence accepts and processes payments (including renewals) from Subscriber by credit card (e.g., Visa, MasterCard, or any other issuer accepted by Inselligence), or as otherwise mutually agreed to by the Parties in writing. If payment will be made by credit card, Inselligence will process payment (including renewals) from Subscriber based on any credit card information Inselligence is provided by Subscriber. Subscriber's credit card agreement governs its use of the designated credit card or account. By providing Inselligence with credit card information, Subscriber agrees that Inselligence is authorized to invoice and charge Subscriber's account for all fees and charges due and payable to Inselligence and that no additional notice or consent is required. If Subscriber's credit card issuer rejects any amount charged on Subscriber's credit card, then Inselligence will notify Subscriber thereof and Subscriber will timely pay the fees and expenses by check or wire transfer. If payment will be made by check or if Subscriber's credit card issuer rejects any amount charged on Subscriber's credit card, amounts owed to Inselligence will be invoiced to Subscriber's address for invoices as designated by Subscriber or, if not designated, then the address printed on this Agreement. If any Subscriber payment is more than thirty (30) days past due, interest at the rate of twelve percent (12%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue. Unless otherwise specified in this Agreement, all fees and other amounts paid by Subscriber under this Agreement are non-refundable. All dollar amounts referred to in this Agreement are in United States Dollars.

4.4. **Suspension.** In the event that Subscriber's account is more than thirty (30) days overdue on any payment for any reason, Inselligence shall have the right, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Subscriber's use of the Proprietary Items, without further notice to Subscriber, until Subscriber has paid the full balance owed, plus any interest due.

## 5. **WARRANTY AND DISCLAIMER.**

5.1. **Warranty.** The Services shall be performed in a professional and workmanlike manner in accordance with industry standards.

5.2. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, ALL SERVICES, PROPRIETARY ITEMS, AND REPORTS ARE PROVIDED "AS IS" AND INSELLIGENCE MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, INSELLIGENCE DOES NOT REPRESENT OR WARRANT THAT: (A) THE PROPRIETARY ITEMS OR REPORTS WILL MEET ANY FORECASTS, EXPECTATIONS OR SPECIFICATIONS OF SUBSCRIBER; (B) THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (C) THE USE OF THE SERVICES WILL NOT RESULT IN A LOSS OF SUBSCRIBER CONTENT OR OTHER SUBSCRIBER DATA; OR (D) THE USE OF THE SERVICES WILL NOT EXPOSE THE SUBSCRIBER'S HARDWARE OR NETWORKS TO ADDITIONAL SECURITY RISK. INSELLIGENCE DOES NOT MAKE ANY GUARANTEES ABOUT THE ACCURACY, CURRENCY, SUITABILITY, OR QUALITY OF THE REPORTS, AND DOES NOT ASSUME RESPONSIBILITY FOR INACCURATE OR MISLEADING REPORTS. SUBSCRIBER IS SOLELY RESPONSIBLE FOR ITS USE OF OR RELIANCE ON ANY SUCH REPORTS OR OTHER INFORMATION OR DATA ACCESSED THROUGH THE SERVICES. SUBSCRIBER IS SOLELY RESPONSIBLE FOR ARCHIVING AND RETAINING ANY AND ALL SUBSCRIBER CONTENT OR DATA UPLOADED TO, DOWNLOADED FROM, OR PROCESSED IN OR THROUGH, THE SERVICES.

6. **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS, A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, MISAPPROPRIATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR BREACH BY A PARTY OF ITS CONFIDENTIALITY OBLIGATIONS, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOST REVENUE, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY ORDER FORMS AND ALL SERVICES, OR THE USE OF THE PROPRIETARY ITEMS BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING ANY ORDER FORMS AND ALL SERVICES, SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY THE SUBSCRIBER TO INSELLIGENCE IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM OF LIABILITY.

7. **CONFIDENTIALITY.** All Confidential Information of a Party (“**Disclosing Party**”) in the possession of the other (“**Receiving Party**”), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality of the Confidential Information. The Disclosing Party’s Confidential Information shall not be used or disclosed by the Receiving Party for any purpose except (a) as necessary to implement or perform this Agreement, or (b) as required by law, provided that the other Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party’s Confidential Information to only those of its employees or representatives whose responsibilities require such use or access and who are bound by obligations of confidentiality at least as protective as those herein. The Receiving Party shall advise all such employees and representatives, before they receive access to or possession of any of the Disclosing Party’s Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Section.

## 8. **SUBSCRIBER CONTENT AND PROPRIETARY ITEMS**

### 8.1. **Subscriber Content.**

- a) Subscriber acknowledges that all Subscriber Content is the sole responsibility of the Subscriber. Subscriber, and not Inselligence, is entirely responsible for all Subscriber Content that Subscriber uploads, posts, transmits or otherwise makes available through the Services.
- b) Subscriber represents that Subscriber owns and/or has all license rights necessary to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, communicate, perform and display Subscriber Content (including, for the avoidance of doubt, the CRM Data) in the manner Subscriber will use such Subscriber Content on or through the Services.
- c) Inselligence has no obligation to pre-screen Subscriber Content, although Inselligence reserves the right in its sole discretion to pre-screen, refuse, or remove any Subscriber Content. Subscriber hereby provides its irrevocable consent to such monitoring.

### 8.2. **Title and Ownership.**

- a) All right, title, and interest in and to the Subscriber Content (including all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights) are and will remain the sole and exclusive property of Subscriber.
- b) All right, title, and interest in and to the Proprietary Items, the Reports (except any Subscriber Content therein), and Inselligence’s Trademarks (including all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights) are and will remain the sole and exclusive property of Inselligence and Inselligence reserves all rights not expressly granted by this Agreement. Any derivative works, modifications, or enhancements relating to the Proprietary Items (whether created alone by either Party or jointly by or on behalf of both Parties), the results of any professional services performed, and any Feedback relating thereto will be solely and exclusively owned by Inselligence. Subscriber hereby assigns to Inselligence any rights, title and interest, including all intellectual property rights in any Feedback, derivative works, modifications, enhancements, or improvements related to the Proprietary Items that Subscriber or any of its Authorized Users or representatives provide, propose, create, conceive, author or develop relating to this Agreement or their use of the Proprietary Items. Subscriber will execute and deliver (or cause its representatives to execute and deliver) any additional documents deemed reasonably necessary or appropriate to perfect, maintain, protect, or enforce Inselligence’s rights described above and the intent of this Section.

## 9. **INDEMNIFICATION**

9.1. **By Inselligence.** Inselligence shall defend at its own expense any action against Subscriber brought by a third party to the extent that the action is based upon a claim that the Services infringe any U.S. copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secrets Act, and Inselligence will pay those costs and damages finally awarded against Subscriber in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of

such action. Subscriber agrees to give Inselligence: (a) prompt written notice of such claim (except that delayed notification will not negate Inselligence's obligations if such delay did not materially prejudice Inselligence's ability to defend the claim); (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as Inselligence may reasonably request, at Inselligence's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Inselligence shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from (1) Subscriber Content or the combination, operation, or use of the Services with products, services, deliverables, materials, technologies, business methods or processes not furnished by Inselligence; (2) modifications which were not made by Inselligence; or (3) Subscriber's breach of this Agreement or use of the Services other than in accordance with this Agreement (collectively, "**IP Exclusions**"). Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that Inselligence believes that such a claim is likely, Inselligence may, at its option (i) modify or replace the Services so that they become non-infringing; (ii) obtain a license to the applicable third-party intellectual property; or (iii) terminate this Agreement (or the applicable Order Forms) on written notice to Subscriber and refund to Subscriber any pre-paid fees for Services not provided based on the remainder of the then current Term. The obligations set forth in this Section shall constitute Inselligence's entire liability and Subscriber's sole remedy for any infringement or misappropriation.

- 9.2. **By Subscriber.** Subscriber shall indemnify, hold harmless, and, at Inselligence's option, defend Inselligence from and against all costs and reasonable expenses (including reasonable attorneys' fees), damages, losses, and liabilities for any actions arising out of any (a) IP Exclusions, or (b) Subscriber Content (including without limitation any third party claim that any Subscriber Content is false, misleading, disparaging, infringing or a misappropriation, as applicable, of any intellectual property rights of a third party). Inselligence agrees to give Subscriber: (i) prompt written notice of such claim (except that delayed notification will not negate Subscriber's obligations if such delay did not materially prejudice Subscriber's ability to defend the claim); (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Subscriber may reasonably request, at Subscriber's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Subscriber shall not settle any third-party claim, unless such settlement completely and forever releases Inselligence with respect thereto or unless Inselligence provides its prior written consent to such settlement. In any action for which Subscriber provides defense on behalf of Inselligence, Inselligence may participate in such defense at its own expense by counsel of its choice.

## 10. TERM AND TERMINATION

- 10.1. This Agreement shall commence on the Effective Date and shall continue for one (1) year from the earlier of (i) the date Subscriber elects to commence the commercial subscription or (ii) the date the Pilot Period expires ("**Initial Term**"). Upon expiration of the Initial Term, this Agreement shall automatically renew for subsequent one (1) year terms (each a "**Renewal Term**", together with the Initial Term, the "**Term**"), unless one Party provides the other Party at least thirty (30) days written notice prior to the end of the then current Term of its intent to not renew the then current term ("**Non-Renewal Notice Deadline**").
- 10.2. Either Party may terminate this Agreement immediately on giving notice in writing to the other Party if the other Party:
- a) commits a material breach (including any non-payment of fees due) and, in the case of a material breach capable of being cured, failed to cure that breach within thirty (30) days after the receipt of a request in writing to cure such breach; or
  - b) (i) files for bankruptcy; (ii) becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the cancellation, extension, or readjustment of substantially all of its obligations; provided, however, if the non-terminating party provides adequate assurances regarding its ability to continue performing the other Party may not terminate.
- 10.3. If an Order Form is terminated, Subscriber shall immediately discontinue use of the Services for the applicable Order Form. Subject to Sections 3.2 (Subscriber Content License), and 3.3 (Data), upon any termination or expiration of this Agreement, whether under this Section or otherwise, all access to Services shall immediately terminate and Subscriber shall discontinue all access and use of all Proprietary Items, and each Party shall promptly return or destroy (at the election of the other Party) any Confidential Information of the other Party then in such Party's possession or control.

- 10.4. Subscriber shall remain liable for all unpaid payments due to Inselligence with respect to the period ending on the date of termination or expiration of the Agreement or any applicable Order Forms. In the event this Agreement is terminated by Subscriber in accordance with Section 10.3(a) for Inselligence's material breach, Inselligence shall refund to Subscriber any pre-paid fees for Services not provided for any applicable Order Forms based on the remainder of the then current Term. Except in the event this Agreement is terminated in accordance with Sections 2.4 (Termination of Evaluation License) or 10.3(a) for Subscriber's material breach, Inselligence will make Analytics Data and Reports available to Subscriber for thirty (30) days after termination or expiration of this Agreement. The provisions of Sections 1, 2.4, the perpetual terms of Sections 3.1(ii), 3.2(b), 3.3, 3.4, 5, 6, 7, 8, 9, 10.4, and 11 shall survive any termination or expiration of this Agreement.

## 11. OTHER PROVISIONS

- 11.1. **Publicity.** Subscriber authorizes Inselligence to use Subscriber's name in any routine list of Inselligence Subscribers and as a reference. Each Party, with prior written consent of the other Party, may publicize the Services to be offered under this Agreement in its marketing and advertising material, and may reproduce the company name, logo, trademark, trade name, service mark, or other commercial or product designations of the other Party in connection therewith; provided, however, that such prior written consent shall not be required for either Party to give the other's name and disclose this Agreement in connection with any filings or press releases which it deems in its good faith discretion to be necessary under federal or state securities laws.
- 11.2. **Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the first business day after being sent by a reputable overnight delivery service. Either Party may change its address for notices by giving written notice of the new address to the other Party.
- 11.3. **Assignment.** Subscriber may not, without Inselligence's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, any Order Forms, or any of its rights or obligations under this Agreement, including with respect to any Order Forms to any third party, whether voluntarily or by operation of law. A sale of assets, merger, or consolidation will be deemed an assignment for the purposes of this Agreement. Any attempted assignment in violation of the foregoing will be null and void.
- 11.4. **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the state of Delaware excluding choice of law; provided, however, that the terms of any applicable law now or hereafter enacted that is based on or similar to the uniform computer information transactions act drafted by the national conference of commissioners on uniform state laws shall not apply. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it that in any way arises out of the Agreement must be litigated exclusively in state or federal courts located in Miami-Dade County, Florida.
- 11.5. **Force Majeure.** Except with respect to Subscriber's payment obligations, neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies or any other cause which could not have been prevented by the non-performing Party with reasonable care.
- 11.6. **Export Laws and Use Outside of the United States.** Subscriber shall comply with all applicable export related laws and regulations. Subscriber shall not export or re-export directly or indirectly (including via remote access) any Proprietary Items (or parts thereof) to any applicable jurisdiction or entity prohibited by law or to which a license is required without first obtaining a license from the applicable regulatory authority. Subscriber will defend, indemnify and hold harmless Inselligence from and against any violation of such laws or regulations by Subscriber or any of its agents, officers, directors, or employees.
- 11.7. **Relationship.** The relationship between the Parties under this Agreement is that of independent contractors and not partners, joint venturers or agents.
- 11.8. **Waiver.** No waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of both Parties. No waiver of any breach of this Agreement, and no course of dealing between the Parties, shall be construed as a waiver of any subsequent breach of this Agreement.



- 11.9. **Order of Precedence.** In the event of a conflict between the provisions of the Agreement and the terms of any Order Form, the Agreement shall control. Any pre-printed terms in an order document or written purchase authorization that add to, or conflict with or contradict, any provisions in the Agreement will have no legal effect.
- 11.10. **Communications.** The communications between you and Inselligence relating to the Services use electronic means. For contractual purposes, you (a) consent to receive communications from Inselligence in an electronic form, whether via email or posting on the Services or other reasonable means; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. If you have any questions about the foregoing, please contact Inselligence at the following e-mail address: [help@inselligence.com].
- 11.11. **Interpretation.** The Section headings of this Agreement are for convenience and will not be used to interpret this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”
- 11.12. **Severability.** If any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, (a) such unenforceable portion of the provision will be deemed severed from this Agreement, (b) the validity and enforceability of the remaining portion of the provision and the other provisions of this Agreement will not be affected or impaired, and (c) this Agreement will be amended in order to effect, to the maximum extent allowable by law, the original intent of such provision.
- 11.13. **Entire Understanding.** This Agreement states the entire understanding between the Parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement.