



ORDER FORM TERMS AND CONDITIONS

Interneer, Inc., doing business as “Intellect”, (“Intellect”) and Company hereby agree to be bound by the following terms and conditions (“Terms and Conditions”) with respect to the Software Licenses and Software Support ordered by Company under the attached Order Form. Upon Intellect’s receipt and acceptance of the attached Order Form, Terms and Conditions and the Intellect Policies and Procedures Guide, which is incorporated herein by reference, will constitute a binding agreement between the parties and together are referred to as “Agreement”.

1 Definitions

“**Software Support**” means the Software Support identified on the Order Form and as more specifically described in the Intellect Policies and Procedures Guide.

“**Authorized Users**” means Software end users authorized by Company to use the Software subject to the limited number on the Order Form.

“**Company**” means the entity listed on the front page of the Order Form.

“**Confidential Information**” means (i) with regard to Intellect, the Software, Documentation, and all other source code, source documentation, object code, inventions, know-how, ideas, programs, utility programs, and Information and Intellectual Property Rights related to, connected with or arising out of the Software, or (ii) with regard to Company, any non-public information regarding the business of the Company, in whole and in part, or (iii) with regard to either Party, any other information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, which is designated in writing to be confidential or proprietary, or if given orally, is designated at the time of disclosure as confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include Information, technical data or know-how which (i) is shown by written record to be in the public domain at the time of the disclosure or becomes available to the public thereafter without restriction, and not as a result of the act or omission of the receiving Party, (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure, (iii) is shown by written record to be lawfully in the possession of the receiving Party at the time of the disclosure, (iv) is approved for release by written authorization of the disclosing Party, (v) is shown by written record to be developed independently and separately by the receiving Party without use of the disclosing Party’s Confidential Information, or (vi) is required to be disclosed by the receiving Party pursuant to law or legally enforceable order of court or judicial body.

“**Current Version**” means the most recently released, generally available, version of the Software.

“**Documentation**” means all on-line help files, written instruction manuals or written correspondence, including emails, regarding the use of the Software delivered or made available by Intellect to Company.

“**Effective Date**” means the latest date of execution of the Order Form.

“**Fees**” means any and all fees owed under this Agreement.

“**Information**” means any technical, or business information in written, graphical, oral, or other tangible or intangible forms, including but not limited to, specifications, drawings, tools, samples, reports, compilations, records, data, computer programs, models, and secrets.

“**Intellectual Property Rights**” means any patent rights, copyrights, trade secrets, trade names, service marks, moral rights, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force.

“**Intellect Policies and Procedures Guide**” means the most recent version of the document provided to or made available to Company that describes various services to be provided by Intellect related to Software.

“**Order Form**” means the order form attached to the front of the “Order Form Terms and Conditions” document.

“**Parties**” means individually or collectively, as the case may be, Intellect and Company and any and all permitted successors and assigns of Intellect and Company respectively.

“**Software**” means the proprietary Intellect Platform computer program and all updates, upgrades and other versions of such program supplied by Intellect to Company under this Agreement.

“**Standard Business Hours**” means Intellect’s standard hours of business as defined in the Intellect Policies and Procedures Guide.

“**Standard Rates**” means the Intellect prevailing rates and charges for labor and materials from Intellect’s standard published price lists in effect at the time the work is performed.

2 Fees and Payment Terms

a. Fee Payments Generally. Company will pay all Fees listed in the Order Form in accordance with the terms of the Agreement.

b. Payment Terms. Any overdue payments will bear interest at the lesser of 1.5% per month or the maximum rate of interest permitted by law, whichever is less, calculated from the due date until the date the overdue amount is received by Intellect.



c. Taxes. All Fees charged by Intellect are exclusive of all customs, duties, taxes, including sales tax, and other governmental assessments. Company is responsible for all such taxes.

3 Confidentiality

a. Confidential Information. The Parties acknowledge that it will be necessary for each of them to disclose or make available to each other Confidential Information.

b. Non-Disclosure. Both during and after termination of this Agreement, each of the Parties agrees: (i) to use commercially reasonable efforts to protect the Confidential Information of the other Party from unauthorized use or disclosure and to use at least the same degree of care with regard to it as it uses to protect its own Confidential Information of a like nature; (ii) to use and reproduce the Confidential Information of the other Party only as permitted under this Agreement or as needed to perform its duties thereunder; and (iii) not to disclose or otherwise permit access to the Confidential Information of the other Party to any third party without the other Party's prior written consent.

4 License

a. Grant of License. Subject to the terms and conditions of this Agreement, Intellect hereby grants to Company, a non-exclusive, non-transferable, non-sublicensable license to (i) install the Software on computer hardware server(s) owned or operated by Company; (ii) provide only Authorized Users with access to the Software through such server(s); and (iii) use the Documentation in connection with such use of the Software.

b. Copies of Software; Access. Company will be entitled to make a reasonable number of copies of the Software for backup or archival purposes only. Company shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform Intellect in writing of such location(s). All reproductions of the Software must contain all titles, trademark symbols, copyright symbols and legends, and other proprietary markings placed by Intellect on Software.

c. License Restrictions. Company agrees that, except as expressly permitted under this Agreement, it will not itself, or through any parent, subsidiary, affiliate, agent or other third party, entity or other business structure (i) modify, create derivative works of, reproduce (except as permitted in Section 4(b) above), sell, lease, license or sublicense any or all of the Software or the Documentation; or (ii) decompile, disassemble, re-program, reverse engineer or otherwise attempt to derive the source code of the Software (including the Documentation) in whole or in part. Company agrees to only install and use the latest version of Software provided by Intellect.

d. Ownership: Intellect. No ownership rights in Software or Documentation are granted by Intellect to Company under this Agreement and all rights in Software and Documentation granted by Intellect to Company are by license only. All ownership rights in the Software and Documentation remain with Intellect and/or its licensors.

e. Ownership: Company. As between Intellect and Company, Company will at all times be and remain the sole and exclusive owner of any Confidential Information of Company stored or placed within the Software by Company. Intellect shall be entitled to use such information in aggregate form and as necessary to perform its obligations under this Agreement.

5 This section intentionally left blank

6 Software Support

So long as Customer has paid all fees due for Software License Fees, Intellect will provide Software Support in accordance with and subject to the terms of the Intellect Policies and Procedures Guide.

7 Additional Requirements of Company

a. Project Management. In addition to Company being required to provide Intellect with all relevant information to assist Intellect in fulfilling its obligations under this Agreement, Company shall designate an employee who shall be assigned the primary responsibility for communicating with and providing necessary assistance to Intellect during the term of this Agreement.

b. Technical Requirements. Company agrees to comply with any applicable hardware, software and other technical requirements for Company's use of the Software as established by Intellect from time to time. Intellect is not obligated to provide any equipment or hardware to Company for any purpose in connection with the Software.

c. Non-Solicitation and Penalty. Company shall not directly or indirectly solicit or induce or attempt to solicit or induce any Personnel to provide services for or be employed by Company for a period of one year after Intellect has ceased performing Services. In the event that Company breaches this Section 7(c) and as a result, an Intellect employee becomes employed by Company, Company shall pay Intellect 100% of that employee's first year compensation earned by that employee for providing services for Company. Intellect and Company agree that this amount represents a fair estimate of the damages suffered by Intellect if Company breaches this Section 7(c).

8 Representations and Warranties; Indemnification

a. General Warranties. Each Party represents and warrants to the other that it is free of any contractual obligation that would prevent it from entering into this Agreement; that the individual executing this Agreement on its behalf is duly authorized to do so; and it will comply in all material respects with all applicable federal, state and local laws, statutes, ordinances, rules and regulations within the United States and any foreign country having jurisdiction.



b. This section intentionally left blank.

c. Company Posting Warranties. Company represents and warrants to Intellect the content or data that it posts or stores on the Software will not violate any state, federal or international law; and any content or data that it posts or transmits to Intellect will not violate or infringe upon the Intellectual Property Right of any third party.

d. Software Warranties. Intellect warrants that from the time the Software is first used by Company, the Software will perform substantially in accordance with the specifications contained in the collection of Intellect User Guides which can be accessed at www.intellectuniversity.com, so long as the Software is used in accordance with those documents.

e. Warranty Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, AND COMPANY'S USE OF THE SOFTWARE IS AT ITS OWN RISK. INTELLECT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE OR THE FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE THEREOF INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. INTELLECT DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. INTELLECT EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OF CONTINUITY OF THIRD PARTY TELECOMMUNICATIONS OR INFORMATION SYSTEMS, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF INTELLECT'S OR ANY THIRD PARTY DATA SECURITY FEATURES OR SYSTEMS. COMPANY UNDERSTANDS AND AGREES THAT ANY DATA OR INFORMATION STORED ON OR VIA THE SOFTWARE IS DONE AT COMPANY'S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM USE OF THE SOFTWARE.

f. Indemnification. Intellect agrees to defend, indemnify, and hold Company harmless from and against any and all claims, suits, liabilities, losses, costs, judgments, damages, expenses (including reasonable attorneys' fees and court and arbitration expenses), demands, and actions ("Claims") in connection with any allegation that the permitted use of Software infringes or misappropriates a U.S. patent, copyright or trade secret. Intellect has no obligations under this Section 8(f) unless Company gives Intellect prompt written notice of any Claims and all prior claims relating thereto. Company shall fully cooperate with Intellect in the defense and settlement of Claims, and Intellect shall have sole control of the defense of and all negotiations for settlement of Claims subject to Company having the right, at its sole discretion and at its sole expense, to participate in the defense to whatever extent Company deems necessary to protect its own interest.

g. Exclusions and Exclusive Remedies. Notwithstanding anything to the contrary stated in this Agreement, Intellect shall not have any obligations under Section 8(f) for any Claims or liability for any breach of representation, warranty or covenant of this Agreement that is caused by, arises out of or relates to (i) the performance of Company network functions; (ii) Company's failure to implement any upgrades or updates delivered by Intellect, (iii) any modifications, alterations of or additions to the Software performed by a party other than Intellect, (iv) use of the Software in a configuration not set forth in or other than as set forth in the Documentation, in a manner for which it was not designed or in combination with systems, products or components not supplied or approved in writing by Intellect, or (v) the Company's other business systems. Company's exclusive remedy for Intellect's breach of the warranty in Section 8(d) is replacement of the Software.

9 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF DATA, BUSINESS INTERRUPTION OR OPPORTUNITY, LOSS OF GOODWILL, LOSS OF INCOME, WORK STOPPAGE, BREACH OF COMPUTER OR TRANSMISSION SECURITY, COMPUTER HARDWARE OR MALFUNCTION, BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR TORT, BREACH OF ANY STATUTORY DUTY, OR PRINCIPLES OF INDEMNITY OR CONTRIBUTION, IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING AND EXCLUDING ANY LIABILITY OF INTELLECT UNDER SECTIONS 3 AND INTELLECT'S OBLIGATIONS UNDER SECTION 8(f), IN NO EVENT WILL INTELLECT'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR CLAIMS OF ANY TYPE EXCEED THE AMOUNT PAID TO INTELLECT BY COMPANY HEREUNDER IN THE CALENDAR YEAR IN WHICH THE CLAIM AROSE.

10 Insurance

Intellect agrees to keep in force the following insurance coverage: (i) Commercial general liability insurance with a limit of liability of \$2,000,000 (two million) per occurrence and \$4,000,000 (four million) in the aggregate; and (ii) Professional liability insurance in the amount of \$2,000,000 (two million) in the aggregate.

11 Term and Termination

a. Term. (i) This Agreement shall become effective on the Effective Date and shall continue in full force unless otherwise terminated as provided under Term Length listed on the front page of the Order Form ("Term"). (ii) This Agreement will continue automatically for additional terms equal to the Term unless either side notifies the other in writing (by email is acceptable) at least ninety (90) days prior to the end of the Term or any renewal Term, as applicable, that it has elected to terminate this Agreement, in which case this Agreement will terminate at the end of such Term.

b. Termination For Cause. Intellect may terminate this Agreement and the License granted herein if Company materially breaches a term of this Agreement and fails to cure such breach within thirty (30) days after the date of written notice of same. Company may terminate this Agreement in the event of Intellect's material breach of Sections 3 or 8(d) of this Agreement and fails to cure such breach within sixty (60) days after the date of written notice of same. Either Party may terminate this Agreement if the other makes an assignment for the benefit of its creditors, or a receiver or a trustee in bankruptcy (or the equivalent) shall be appointed.



c. Effect of Termination. Upon termination of this Agreement for any reason, the License granted to Company will immediately terminate and Company shall immediately discontinue use of the Software, Documentation and Confidential Information and, within fifteen (15) days, certify in writing to Intellect that all copies of the Software, if applicable, Documentation and Confidential Information have been returned to Intellect or destroyed in accordance with Intellect instructions. In the event of a termination of this Agreement, Sections 3, 8(c), 11-13 and any payment obligations of Company shall survive the termination of this Agreement.

12 Binding Arbitration and Injunctive Relief

If any matter under this Agreement is subject to a dispute between the Parties which cannot be resolved to their mutual satisfaction, either Party by a written request for arbitration delivered to the other, shall require that the matter be arbitrated in binding arbitration pursuant to the commercial arbitration rules then in effect of the American Arbitration Association. The venue for any matter arbitrated under this Agreement shall be Los Angeles County, California. If the Parties cannot agree on a single arbitrator within ten (10) days of the delivery of the request for arbitration, three disinterested arbitrators shall be used, one to be chosen by each of the Parties, and the third chosen by the first two before they enter upon arbitration, to act as umpire. If either Party fails to appoint an arbitrator, or if two (2) arbitrators fail to appoint a third (3rd) arbitrator within ten (10) days, either Party may request the American Arbitration Association to appoint the necessary arbitrator(s). Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the above, Intellect is permitted to seek injunctive or similar relief in any court of competent jurisdiction for any action related to protecting Intellect's Intellectual Property Rights.

13 General Provisions

a. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without giving effect to the principle of conflict of laws.

b. Severability; Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

c. Assignment. Company may not assign this Agreement to a third party without the prior written consent of Intellect; such consent will not be unreasonably withheld.

d. Independent Contractors. The Parties are independent contractors, and no agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement.

e. Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, failure of the Internet, extended power failures, large increases in online activity in a short period of time (commonly known as usage spikes), attacks on its computer network or server, viruses which are not preventable through generally commercially available products and catastrophic hardware and telecommunication failures, provided that the delayed Party: (i) gives the other Party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

f. Attorney's Fees. In the event any Party to this Agreement shall be required to initiate legal proceedings to enforce performance of any term or condition of this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees and court costs incurred on account thereof (including, without limitation, the costs of any appeal) notwithstanding the nature of the claim or cause of action asserted by the prevailing Party.

g. Publicity. Company acknowledges that Intellect may desire to use its name in press releases, product brochures and financial reports indicating that Company is a customer of Intellect, and Company agrees that Intellect may use its name in such a manner.

h. Notices. Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, addressed to the respective parties as follows: To Intellect, 6100 Center Drive, Suite 1150, Los Angeles, CA 90045 Attn: President & CEO; To Company: To the address indicated on the front page of the Order Form.

i. Parties in Interest. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. The Parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties to this Agreement.

j. Headings. The headings inserted in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

k. Modification and Counterparts. No modification of this Agreement shall be binding unless an authorized representative of Intellect and Company signs such change. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

l. Entire Agreement. This Agreement and all documents incorporated herein by reference constitutes the entire understanding and agreement of the Parties and supersedes any and all oral or written agreements or understandings between the Parties as to the subject matter of this Agreement. The Parties agree the terms of this Agreement shall supersede the terms contained in any Company purchase order or other ordering document. Neither Party is relying upon any warranties, representations, assurances or inducements not expressly set forth in this Agreement.