



Master Subscription Agreement

SiteAcuity On-Demand

TERMS OF USE:

BY SIGNING A SITEACUITY SERVICES AGREEMENT OR BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE ONLINE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF SITEACUITY'S ONLINE SOFTWARE AND SERVICES (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.

Welcome

As part of the Service, SiteAcuity will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the SiteAcuity website incorporated by reference herein, including but not limited to SiteAcuity's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

The Service includes several applications:

- Cross-Channel Analytics (CCA)
- Visitor Interaction Manager (VIM) Standard Edition
- Visitor Interaction Manager (VIM) Lite Edition
- Account Administration

In addition, we occasionally extend a limited, 30-day free trial of our Service with no further obligation. Please see our website for feature differences between the various applications and editions.

1. Privacy & Security; Disclosure

SiteAcuity's privacy and security policies may be viewed at <http://www.siteacuity.com>. SiteAcuity reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from SiteAcuity from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the Service is a hosted, online application, SiteAcuity occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you become a paying client of the Service, you agree that SiteAcuity can disclose the fact that you are a paying client and the application(s) and edition(s) that you are using.

2. License Grant & Restrictions

SiteAcuity hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by SiteAcuity and its licensors.



You may not access the Service if you are a direct competitor of SiteAcuity, except with SiteAcuity's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User Seat licenses, which measure concurrent User logins per application and/or edition, can be shared or used by more than one individual User and may be reassigned.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify SiteAcuity immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to SiteAcuity immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another SiteAcuity user or provide false identity information to gain access to or use the Service.

4. Account Information and Data

SiteAcuity does not own any data, information or material that you submit to the Service in the course of using the Service ("Client Data"). You, not SiteAcuity, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data, and SiteAcuity shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data. In the event this Agreement is terminated (other than by reason of your breach), SiteAcuity will make available to you a file of the Client Data within 30 days of termination if you so request in writing at the time of termination. SiteAcuity reserves the right to withhold, remove and/or discard Client Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Client Data immediately ceases, and SiteAcuity shall have no obligation to maintain or forward any Client Data.

5. Intellectual Property Ownership

SiteAcuity alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the SiteAcuity Technology, the Content and the Service



and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the SiteAcuity Technology or the Intellectual Property Rights owned by SiteAcuity. The SiteAcuity name, the SiteAcuity logo, and the product names associated with the Service are trademarks of SiteAcuity, and no right or license is granted to use them without the express, written consent of SiteAcuity.

6. Third Party Interactions

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between you and the applicable third-party. SiteAcuity and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. SiteAcuity does not endorse any sites on the Internet that are linked through the Service. SiteAcuity provides these links to you only as a matter of convenience, and in no event shall SiteAcuity or its licensors be responsible for any content, products, or other materials on or available from such sites. SiteAcuity provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

Service features that interoperate with the Google AdWords program depend on the continuing availability of XML reports from Google AdWords. If Google Inc. ceases to make the Google AdWords XML reports or program available, SiteAcuity may cease providing such Service features without entitling you to any refund, credit, or other compensation.

7. Charges and Payment of Subscription Fees

Your Base Subscription comes with a pre-defined number of Seats for the SiteAcuity On-Demand applications ("Included Seats"). Additional Seats ordered beyond the Included Seats ("Add-on Seats"), may also be purchased for each application. Subscription fees must be paid in advance for the Base Subscription and any/all Add-on Seats.

You shall pay all Subscription fees to your account in accordance with the fees, charges, and billing terms in effect at the time the fee or charge is due and payable. The initial charges will be equal to the Base Subscription rate plus the total Add-on Seats requested, if any, times the Add-on Seat rate. All payments for Subscription fees must be made monthly in advance, unless otherwise mutually agreed upon in your Service Agreement. All payment obligations are non-cancelable and all amounts paid are nonrefundable. You must provide SiteAcuity with valid credit card or approved purchase order information as a condition to signing up for the Service.

An authorized Account Administrator may request additional Add-on Seats by executing an additional written Order Form or making the request online through the Account Administration application. After the Initial Charge, which establishes your account, Add-on Seats will be charged at the then-current, generally applicable Add-On Seat fee prorated to the next monthly anniversary of the account.

SiteAcuity reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

8. Usage Charges

8.1 Excess Clickstream Processing Fees

The maximum clickstream data records that the SiteAcuity system will process and store for you at no



additional charge is one hundred thousand (100,000) per month, unless otherwise stipulated in your Service Agreement. If the amount of clickstream records for the billing period exceeds one hundred thousand per month, you will be charged the then-current Excess Clickstream Processing fees on your billing anniversary.

8.2 Excess Data Storage Fees

The maximum disk storage space provided to you at no additional charge is the greater of i) 1 gigabyte (GB) or ii) an aggregate of 20 megabytes (MB) per User Seat license. If the amount of disk storage required exceeds these limits, you will be charged the then-current storage fees on your billing anniversary, based on the daily average storage utilization for the billing period. SiteAcuity will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by SiteAcuity to so notify you shall not affect your responsibility for such additional storage charges. SiteAcuity reserves the right to establish or modify its general practices and limits relating to storage of Client Data.

8.3 Excess Active Campaigns

The maximum number of simultaneously active Campaigns provided to you at no additional charge is fifty (50). If the amount of active campaigns, as measured by the daily average for the billing period, exceeds fifty, you will be charged the Excess Active Campaigns fees at the then-current rate.

9. Billing and Renewal

SiteAcuity charges and collects in advance for Subscription fees, and in arrears for Usage Charges. SiteAcuity will automatically renew and bill your credit card or issue an invoice to you each month on the subsequent anniversary or as otherwise mutually agreed upon. The charges will include all Subscription Fees any Usage Charges. The Subscription Fees will equal the Base Subscription, plus any/all Add-on Seats at the then-current rate. The Usage Charges will be calculated based on your actual utilization levels as described above. Fees for other services will be charged on an as-quoted basis. SiteAcuity's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on SiteAcuity's income.

You agree to provide SiteAcuity with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, SiteAcuity reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless SiteAcuity in its discretion determines otherwise: (i) entities with headquarters and a majority of users resident in the United States will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes ("U.S. Clients"); (ii) entities with headquarters and a majority of users resident in Japan will be billed in Japanese yen and subject to Japanese payment terms and pricing schemes ("Japanese Clients"); and (iii) all other entities will be billed in U.S. dollars, Euros or local currency and be subject to either U.S. or non-U.S. payment terms and pricing schemes at the discretion of SiteAcuity ("Non-U.S./Japan Clients").

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.



10. Non-Payment and Suspension

In addition to any other rights granted to SiteAcuity herein, SiteAcuity reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or SiteAcuity initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that SiteAcuity may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

SiteAcuity reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that SiteAcuity has no obligation to retain Client Data and that such Client Data may be irretrievably deleted if your account is 30 days or more delinquent.

11. Termination upon Expiration/Reduction in Number of Seats

The term of this Agreement is indefinite and may be terminated at any time in SiteAcuity's sole discretion. This Agreement commences on the Effective Date, which will be the date you agree to pay for the Service by completing the online subscription form, or on the start date of your Service Agreement. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at SiteAcuity's then-current fees. Either party may terminate this Agreement by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated (other than by reason of your breach), SiteAcuity will make available to you a file of the Client Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that SiteAcuity has no obligation to retain the Client Data, and may delete such Client Data, more than 30 days after termination.

You may reduce your number of Add-On Seats at any time by notifying SiteAcuity client support, or requesting an Add-On Seat downgrade online within the Account Administration application. All amounts previously paid for the eliminated seats are nonrefundable. At your next account anniversary, you will not be charged for the downgraded seats and they will become unavailable.

12. Termination for Cause

Any breach of your payment obligations or unauthorized use of the SiteAcuity Technology or Service will be deemed a material breach of this Agreement. SiteAcuity, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, SiteAcuity may terminate a free account at any time in its sole discretion. You agree and acknowledge that SiteAcuity has no obligation to retain the Client Data, and may delete such Client Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

13. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. SiteAcuity represents and warrants that it will provide the Service in a manner consistent



with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online SiteAcuity help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

14. Mutual Indemnification

You shall indemnify and hold SiteAcuity, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Client Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that SiteAcuity (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release SiteAcuity of all liability and such settlement does not affect SiteAcuity's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

SiteAcuity shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by SiteAcuity of its representations or warranties; or (iii) a claim arising from breach of this Agreement by SiteAcuity; provided that you (a) promptly give written notice of the claim to SiteAcuity; (b) give SiteAcuity sole control of the defense and settlement of the claim (provided that SiteAcuity may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to SiteAcuity all available information and assistance; and (d) have not compromised or settled such claim. SiteAcuity shall have no indemnification obligation, and you shall indemnify SiteAcuity pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

15. Disclaimer of Warranties

SITEACUITY AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. SITEACUITY AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY SITEACUITY AND ITS LICENSORS.



16. Internet Delays

SITEACUITY'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SITEACUITY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

17. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

19. Local Laws and Export Control

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

SiteAcuity and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, Switzerland and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member



States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

20. Notice

SiteAcuity may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in SiteAcuity's account information, or by written communication sent by first class mail or pre-paid post to your address on record in SiteAcuity's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to SiteAcuity (such notice shall be deemed given when received by SiteAcuity) at any time by any of the following: letter sent by confirmed facsimile to SiteAcuity at the following fax numbers (whichever is appropriate): (973)921-9337; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to SiteAcuity at the following addresses (whichever is appropriate): SiteAcuity, LLC, 60 Morris Turnpike, Summit, NJ 07901; in either case, addressed to the attention of: Chief Administration Officer.

21. Modification to Terms

SiteAcuity reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

22. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of SiteAcuity but may be assigned without your consent by SiteAcuity to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of SiteAcuity directly or indirectly owning or controlling 50% or more of you shall entitle SiteAcuity to terminate this Agreement for cause immediately upon written notice.

23. General

With respect to U.S. Clients, this Agreement shall be governed by New Jersey law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Newark, New Jersey. No text or information set forth on any other purchase order, preprinted form or document (other than a SiteAcuity Service Agreement, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and SiteAcuity as a result of this agreement or use of the Service. The failure of SiteAcuity to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by SiteAcuity in writing. This Agreement, together with any applicable Service Agreement, comprises the entire agreement between you and SiteAcuity and supersedes all prior or contemporaneous negotiations, discussions or agreements,



whether written or oral, between the parties regarding the subject matter contained herein.

24. Definitions

As used in this Agreement and in any Service Agreements now or hereafter associated herewith: "Agreement" means these terms of use, any Service Agreements, whether written or submitted online via the Online Order Center, and any materials available on the SiteAcuity website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by SiteAcuity from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Client Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is monthly, the Initial Term is the first month); "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "Account Administrator(s)" means those Users designated by you who are authorized to purchase user Seats online using the online Account Administration application or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "Service Agreement(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of Add-on Seats and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Service Agreement to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Service Agreement, the terms of this Agreement shall prevail); "Account Administration" means SiteAcuity's online application that allows the Account Administrator designated by you to, among other things, add additional Users to the Service; "SiteAcuity" means collectively SiteAcuity, LLC, a New Jersey Limited Liability Company, having its principal place of business at 60 Morris Turnpike, Summit, NJ 07901; "SiteAcuity Technology" means all of SiteAcuity's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by SiteAcuity in providing the Service; "Service(s)" means collectively all of the SiteAcuity software applications, editions and features made available to you online and identified during the ordering process, developed, operated, and maintained by SiteAcuity, accessible via <http://www.SiteAcuity.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by SiteAcuity, to which you are being granted access under this Agreement, including the SiteAcuity Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by SiteAcuity at your request).

Questions or Additional Information:

If you have questions regarding this Agreement or wish to obtain additional information, please contact your account manager or send an e-mail to info@siteacuity.com.