

SERVICES TERMS AND CONDITIONS

THESE SERVICES TERMS AND CONDITIONS apply to the Service Agreement (“Agreement”) made as of the Effective Date by and between Intellias Inc. a Texas corporation with offices located 5757 Alpha Rd Ste 625, Dallas, Texas, 75240 (“Intellias”) and the party identified as Customer thereunder.

ARTICLE I: DEFINITIONS

Section 1.02 -- Definitions: The following definitions shall apply:

- (1) Access: The term “access” and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) Associates: The term “Associates” shall mean employees of Intellias and independent contractors hired by Intellias.
- (3) Authorized Person: The term “Authorized Person” shall mean (i) employees of Customer with a need to know Confidential Information basis who agree to maintain the confidentiality of such Confidential Information and (ii) a person or organization who is authorized in writing by Intellias to receive Confidential Information and who agrees to maintain the confidentiality of such Confidential Information.
- (4) Cancellation Notice: The term “Cancellation Notice” shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to cancel this Agreement or a Work Order because of breach by such other party.
- (5) Confidential Information: The term “Confidential Information” shall mean all information concerning the business and technical plans of Intellias, the Services, Deliverables, Intellias Technology and this Agreement which is disclosed by Intellias to Customer or learned by Customer and which is not: (i) already known to Customer from a source other than Intellias; or (ii) independently developed by Customer.
- (6) Customer Facility: The term “Customer Facility” shall mean the facility of Customer located at the address set forth for Customer on the signature page of this Agreement.
- (7) Deliverables: The term “Deliverable” shall mean deliverables provided to Customer in connection with Services or as defined in a Work Order, including Licensed Technology (as the case may be).
- (8) Effective Date: The term “Effective Date” shall mean the date this Agreement is signed by Intellias and Customer (whichever is later).
- (9) Fee: The term "Fee" shall mean an amount of money for performance of Services set forth in the Agreement..
- (10) Intellias Technology: The term “Intellias Technology” shall mean any and all Technology developed by Intellias, whether exclusively or jointly with Customer or a third-party, regardless of the source of the funding for such development, including Licensed Technology.
- (11) Licensed Technology: The term “Licensed Technology” shall mean the Intellias Technology (in object code form for computer software) provided to or made available (as the case may be) to Customer for use in connection with the Deliverables, including Intellias electronic commerce software applications.
- (12) Proprietary Information: The term “Proprietary Information” shall mean the Confidential Information, Deliverables, and Intellias Technology.
- (13) Restatements: The term “Restatements” shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, Section 1 of the Uniform Trade Secrets Act and Section 1839 of Title 18 of the United States Code (18 U.S.C. §1839).
- (14) Services: The term “Services” shall mean shall mean those certain technical advice, consultations, project management, system design, software development, marketing strategy, and adhoc services provided by Intellias to Customer.
- (15) Technology: The term “Technology” shall mean (i) evaluation, technical, scientific, engineering, marketing, financial and business reports, plans, studies, diagrams, forms, or flow charts; (ii) all forms and types of scientific, technical, economic, or engineering information; and (iii) information, data, ideas, works of authorship, computer software, source code, object code, executable code, documentation, databases, database designs, data dictionaries, data models, fields, records, scripts, texts, interface designs, protocols, screen displays, graphics, web sites, links, patterns, compilations, formulas, methods, methodologies, processes, derivative works, machines, articles of manufacture, improvements, hardware, components, peripherals, equipment, whether tangible or intangible, and whether stored,

compiled or memorialized (without limitation) physically, electronically, graphically, photographically, or in writing.

- (16) Term: The term “Term” shall mean a period of time starting with the Effective Date and continuing until this Agreement is terminated or canceled under Article VII of this Agreement.
- (17) Work Order: The term “Work Order” shall mean that certain signature page of this Agreement as signed by Intellias and Customer.
- (18) Services Agreement: The term “Services Agreement” refers to the signature page labeled as such and signed by the parties incorporating by reference the SERVICES TERMS AND CONDITIONS.

ARTICLE II: SERVICES

Section 2.01 -- Consulting: Customer requests Intellias to provide Services to Customer as provided in the Agreement.

Section 2.02 -- Scope: The scope of this Agreement shall include the Work Order as signed by Intellias and Customer, the terms of which are incorporated herein and made a part hereof. In the event of any conflict between the terms of this Agreement and the terms of any Work Order, the terms of this Agreement shall govern.

Section 2.03 -- Cooperation: Customer hereby acknowledges that successful performance by Intellias of the Services shall require Customer to cooperate with Intellias in good faith and to provide information concerning Customer information technology, computers, computer software, business processes and products as may be requested by Intellias from time to time. Customer hereby agrees to provide such good faith cooperation and information. Customer hereby authorizes Intellias to access the personnel, facilities, information technology, computers, computer software and data of Customer solely for purposes of performing this Agreement.

Section 2.04 -- Facilities: Unless otherwise required (as determined exclusively by Intellias), the Services shall be performed at the office facilities of Intellias.

Section 2.05 -- Acceptance: The Services shall be deemed delivered by Intellias and accepted by Customer upon performance. The personnel assigned to perform the Services shall be determined solely by Intellias.

Section 2.06 -- Schedule: The Services shall be performed during the hours of 8:00 a.m. through 5:00 p.m., Eastern Standard Time, Monday through Friday (excluding holidays), unless otherwise required (as determined exclusively by Intellias).

ARTICLE III: PAYMENT

Section 3.01 -- Fee: Customer shall pay the Fee by the Effective Date.

Section 3.02 -- Services: Services shall be performed by Intellias at the time and material rates of Intellias prevailing at the time such Services are rendered.

Section 3.03 -- Costs: Customer shall pay Intellias all direct costs, including (without limitation) postage, shipping, travel, lodging, per diem, telephone, telecommunications, material and reproduction expenses incurred by Intellias in performing Services under this Agreement. Customer shall pay any and all applicable taxes (excluding income taxes assessed against Intellias).

Section 3.04 -- Invoicing: Intellias shall invoice Customer monthly for fees and expenses in connection with Services under this Agreement. Customer shall pay any such invoice in full on the due date thereof or within twenty days of receiving such invoice, whichever is earlier. Any amount of money which is not paid by Customer when due shall be increased by a late fee equal to 1½% for each month or portion thereof in which such amount is due and not paid.

ARTICLE IV: LICENSE

Section 4.01 -- Deliverables: Subject to Customer compliance with the obligations of Customer under this Agreement, including (without limitation) payment obligations, Intellias hereby grants Customer a non-exclusive, non-transferable license to use the Deliverables (excluding the Licensed Technology) at the Customer Facility for the Term.

Section 4.02 -- Licensed Technology: Customer hereby acknowledges and agrees that the execution of this Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer to use the Licensed Technology. In the event Deliverables include Licensed Technology, use of the Licensed Technology shall be subject to Intellias standard licensing terms for the Licensed Technology.

ARTICLE V: INTELLECTUAL PROPERTY

Section 5.01 -- Proprietary Information: Title to the Proprietary Information, including all ownership rights to patents, copyrights, trademarks and trade secrets in connection therewith, shall be the exclusive property of Intellias. Customer hereby assigns and transfers to Intellias any and all rights, title and interests that Customer may have or accrue in the Proprietary Information, including all ownership rights in patents, copyrights, trademarks and trade secrets in connection therewith.

Section 5.02 -- Confidential Information: Customer shall not disclose Confidential Information except to Authorized

Persons. Customer shall not duplicate, use or disclose Confidential Information except as permitted under this Agreement.

Section 5.03 -- Reverse Engineering: Customer shall not reverse engineer, decompile, disassemble or translate the Deliverables or access the Deliverable using third party software without the prior written consent of Intellias. Customer shall not allow the Deliverable to be reverse engineered, decompiled, disassembled, translated or accessed using third party software without the prior written consent of Intellias.

Section 5.04 -- Modifications: The execution of this Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer to use the Confidential Information to prepare or use derivative works. Customer shall not modify the Deliverables and shall not allow the Deliverables to be modified without the prior written consent of Intellias. Customer shall not use the Deliverables or any materials incident thereto to prepare derivative works, including (without limitation) developing computer software, without the prior written consent of Intellias. If the Deliverables are modified, such modifications shall be the sole and exclusive property of Intellias and Intellias shall own any and all of the rights, title and interests to such modifications and any resulting derivative works, including (without limitation) all copyrights, patents and trade secrets related thereto.

Section 5.05 -- Trade Secrets: Customer hereby acknowledges and agrees that the Confidential Information derives independent economic value (actual or potential) from not being generally known to the other persons who can obtain economic value from its disclosure or use and from not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts under the circumstances to maintain its secrecy; and is a trade secret of Intellias as defined under applicable State Statute and any Restatements.

Section 5.06 -- No Contest: Customer shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks and trade secrets of Intellias.

ARTICLE VI: WARRANTY

Section 6.01 -- Service Warranty: The Services shall be performed on a reasonable efforts basis by qualified personnel in accordance with standard industry practices for similar services.

SECTION 6.02 -- DELIVERABLES WARRANTY:
THE DELIVERABLES ARE PROVIDED UNDER THIS AGREEMENT "AS IS" WITHOUT WARRANTY OF ANY KIND. INTELLIAS MAKES NO WARRANTY REGARDING THE DELIVERABLES, EXPRESS OR IMPLIED.

INTELLIAS DISCALIMS AND CUSTOMER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

SECTION 6.03 -- WARRANTY LIMITATION: THE WARRANTY SET FORTH IN SECTION 6.01 IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. EXCEPTING THE WARRANTY SET FORTH IN SECTION 6.01, INTELLIAS HEREBY DISCLAIMS AND CUSTOMER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INLCUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 6.04 -- Express Warranties: Customer hereby acknowledges and agrees that Intellias (including officers, employees, agents, directors and independent contractors of Intellias) has not granted to Customer or made any express warranties concerning the Proprietary Information and the Services, except the service warranty of Section 6.01.

Section 6.05 -- Limitation of Damages: Intellias shall not be liable to Customer or to a third party under this Agreement for any direct, indirect, lost profits, consequential, exemplary, incidental, or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether Intellias has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

Section 6.06 -- Exclusive Remedy: The exclusive remedy of Customer for any reason and for any cause of action whatsoever in connection with or relating to the Agreement, or any transaction involving the Deliverables, regardless of the form of action, whether in contract or in tort, shall be limited to repair or replacement of the Deliverables or reperformance of Services, as determined by Intellias.

Section 6.07 -- Limitation of Liability: Notwithstanding Section 6.06, the liability of Intellias for any reason and for any cause of action whatsoever in connection with this Agreement, regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the amount of money received by Intellias from Customer pursuant to the Work Order from which such damages or liability arose.

Section 6.08 -- Force Majeure: Intellias shall be not liable to Customer for failing to perform its obligations hereunder because of circumstances beyond the control of Intellias.

Such circumstances shall include (without limitation) any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, labor disputes, war, laws, court orders, telecommunication failure, electronic mail failure, power failure, delays in transportation or deliveries of supplies or materials, acts of God, computer failure, failure of Customer to cooperate with the reasonable requests of Intellias, breach of this Agreement or any Work Order by Customer, and any events reasonably beyond the control of Intellias.

Section 6.09 – Intellias Indemnification: Customer shall release, indemnify, defend and hold harmless Intellias (including parents, subsidiaries, affiliates, officers, employees, agents, directors, and independent contractors of Intellias) from and against any claims, liability, damages, costs or losses (including reasonable attorney fees) arising from or in connection with use of the Deliverables by Customer, use by Intellias of any third party intellectual property made available to Intellias by Customer, including (without limitation) third party technology, breach of this Agreement or a Work Order by Customer, and any negligent or willful act by Customer causing damages to Intellias.

Section 6.10 -- Customer Indemnification: If a final judgment from a court of competent jurisdiction is entered against Intellias upholding claims that the Deliverables violate a United States patent, copyright, trade secret, trademark, or other proprietary rights of a third party in the United States, provided that Customer gives Intellias prompt written notice upon Customer's knowledge of any such claim, permits Intellias to answer and defend or settle (at Intellias option) such claim or action, and provides Intellias with information, assistance, and authority to assist Intellias in the defense or settlement of such claim or action, Intellias shall perform one or more of the following actions (as determined by Intellias) within one year of the date judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:

- (1) Replacement: Replace the Deliverables with a non-infringing product of substantially equivalent functional and performance capability;
- (2) Modification: Modify the Deliverables to avoid the infringement without substantially eliminating the functional and performance capabilities of the Deliverables;
- (3) Obtain License: Obtain a license for use of the Deliverables from the third party claiming infringement for use of the Deliverables.

The remedies set forth herein shall be the sole and exclusive remedies of Customer under this Agreement for any and all such claims of infringement.

Section 6.11 -- Reliance: Unless advised to the contrary in writing at the time of disclosure, Intellias shall be entitled to rely on any information provided by Customer as true and correct.

ARTICLE VII: TERMINATION

Section 7.01 -- Termination Limitations: This Agreement shall only be terminated or canceled as provided under this Article VII. This Agreement shall be valid for the Term.

Section 7.02 -- Termination: Either party may terminate this Agreement for convenience upon providing thirty (30) days written notice of termination to the other party. Termination of this Agreement shall terminate this Agreement.

Section 7.03 -- Cancellation: If a party violates its obligations under this Agreement, the other party may cancel this Agreement by sending Cancellation Notice describing the noncompliance to the noncomplying party. Upon receiving Cancellation Notice, the noncomplying party shall have twenty (20) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required twenty (20) day period, the party providing Cancellation Notice shall have the right to cancel this Agreement and such Work Order as of the twenty-first (21st) day after the date of the Cancellation Notice. Cancellation of this Agreement shall cancel this Agreement. Notwithstanding Sections 3.03, 7.02 and 7.03, Customer failure to pay an invoice shall be sufficient cause for cancellation of this Agreement by Intellias.

Section 7.04 -- Return of Materials: Upon termination or cancellation of this Agreement, Customer shall return to Intellias all Deliverables and all property of Intellias and shall provide Intellias with a certificate of compliance with this Section 7.04 signed by an authorized representative of Customer. Upon termination or cancellation of this Agreement, Customer shall return to Intellias all Deliverables developed pursuant to this Agreement.

Section 7.05 -- Refund: Upon termination or cancellation of this Agreement, Intellias shall be entitled to retain all payments rendered to Intellias under this Agreement, including (without limitation) all fees and expenses rendered to Intellias by Customer in anticipation of services hereunder. Termination or cancellation of this Agreement shall not terminate or cancel any payment obligation of Customer under this Agreement.

ARTICLE VIII: MISCELLANEOUS

Section 8.01 -- Assignments: All assignments of rights under this Agreement by Customer, without the prior written consent of Intellias shall be void.

Section 8.02 -- Public Announcements: All public announcements of the relationship of Intellias and Customer under this Agreement shall be subject to the prior written approval of Intellias. Intellias shall have the right to use the name of Customer as a reference for marketing purposes in connection with the Services.

Section 8.03 -- Entire Agreement: This Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning the subject matter herein.

Section 8.04 -- Employee Pirating: During the Term and continuing two years thereafter, Customer shall not (1) induce or solicit (directly or indirectly) any Associate of Intellias to leave the employ or hire of Intellias or (2) engage (directly or indirectly) the services of an Associate (as an employee, consultant, independent contractor, or otherwise) without the advance written consent of Intellias.

Section 8.05 -- Amendments and Modifications and Severability: Alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such alterations, modifications or amendments are in writing and signed by authorized representatives of Intellias and Customer. If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 8.06 -- General: The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph or provision. Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

Section 8.07 -- Governing Law: This Agreement shall be governed by the laws of the State of Texas without regard to any rules of conflict or choice of laws which require the application of laws of another jurisdiction, and venue shall be Dallas, Texas.

Section 8.08 -- Notice: Notices shall be in writing and shall be deemed delivered when delivered by commercial next business day delivery service, Certified or Registered Mail – Return Receipt Requested or by hand to the address set forth in this Agreement for Intellias and for Customer on the signature page of this Agreement. Notices shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt.

Section 8.09 -- Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the party waiving such provision.

Section 8.10 -- Relationship of the Parties: Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

Section 8.11 -- Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of American Arbitration Association in Dallas, Texas. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Qualified Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure. The Arbitration shall be administered by American Arbitration Association.

Section 8.12 -- Equitable Remedies: The parties hereby acknowledge that damages at law may be an inadequate remedy for Intellias. Therefore, Intellias shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by Customer.

Section 8.13 -- Continuation: The terms and provisions of Article I, III, V, VI and VIII shall survive termination and cancellation of this Agreement.