

STANDARD TERMS AND CONDITIONS

A fully-executed Order for Agility Services (the “Order”) constitutes acceptance to the following Standard Terms and Conditions and to the Data Processing Agreement Addendum (and together with the Order shall be referred to herein as the “Agreement”) governing those Services selected in the Order.

1. Definitions

(a) “Agility” shall have the meaning set forth in Section 2 herein.

(b) “Change Notice” shall have the meaning set forth in Section 7 herein.

(c) “Confidential Information” shall have the meaning set forth in Section 8 herein.

(d) “Content” means Customer and/or third-party content and materials, including but not limited to text, photographs, videos, reviews, books, articles, guides, and other materials uploaded, transmitted, distributed, displayed or otherwise made available or utilized in connection with the Services.

(e) “Customer” means the person or persons named as the Customer in the applicable Order for whom Agility has agreed to provide the Services in accordance with the Agreement.

(f) “Data Processing Agreement Addendum” means the Agility PR Solutions Data Processing Agreement Addendum which can be located at <https://www.agilitypr.com/agility/terms-of-use/>

(g) “Equipment” means any and all equipment, including without limitation, any modems, tablet devices, hardware, server, software, operating system, networking, web servers, and long distance and local telephone service.

(h) “Initial Term” means the initial term of the Services as set forth in the applicable Order.

(i) “Permitted Users” mean those users who are expressly authorized by Customer to access the Services and are permitted to access the Services under this Agreement.

(j) “Product” means the subscription product set forth in the Order.

(k) “Purpose” shall have the meaning set forth for each Product in the Product Purpose Addendum which can be located at <https://www.agilitypr.com/agility/terms-of-use/>.

(l) “Renewal Term” shall have the meaning set forth in Section 5(a) herein.

(m) “Services” means the services to be provided under the Agreement as selected and more particularly described in the Order.

(n) “Software” means the source code, object code or underlying structure, idea or algorithms of the Services or any software, documentation or data related to the Services.

(o) “Spam” shall mean an electronic message sent to recipients in bulk (i) where a recipient’s personal identity and context are irrelevant because the message is equally applicable to many other potential recipients; and (ii) where a recipient has not provided implicit or explicit consent.

(p) “Start Date” means the commencement date of the Initial Term of the Order.

2. Agility Contracting Entity

For purposes of this Agreement, “Agility” means the entity identified below based on Customer’s billing address.

Customer’s Billing Address	Agility Contracting Entity
Canada	Agility PR Solutions Canada Limited
United Kingdom, EU and EEA Countries	Agility PR Solutions Limited
United States and any other location not covered above	Agility PR Solutions LLC

3. Purpose and Licenses

- (a) The parties acknowledge and agree that the Product shall be used solely for the Purpose attributed to the subject Product. Customer shall use the Product in a professional manner consistent with the Purpose and in compliance with applicable laws and regulations, including without limitation laws regarding Spam.
- (b) With respect to any Product Agility provides access to as part of the Services, Agility hereby grants Customer and Permitted Users of Customer, a non-transferable, non-sub-licensable, limited, non-exclusive license to use such Product as contemplated by this Agreement for the applicable Term set forth in the Order.
- (c) With respect to any Content Customer uploads to or transmits via the Product in connection with the Services, Customer hereby grants Agility a non-transferable, non-sub-licensable, limited, non-exclusive license to such Content solely as necessary to perform and maintain the Services.

4. Delivery of the Services

- (a) Delivery. Agility shall deliver the Services in accordance with the Agreement. To the extent that performance of any of Agility's obligations under the Agreement is prevented or delayed by any act or omission of Customer, Agility shall not be in breach of such obligations.
- (b) Ancillaries. Customer shall be responsible for obtaining and maintaining any Equipment and ancillary services needed to connect to, access or otherwise use the Services, except as set forth in writing in the applicable Order.
- (c) Security. Customer shall be responsible for maintaining a commercially reasonable level of physical and electronic security as to the Equipment, Permitted User accounts, passwords, Product, Software and Services in its control; and for ensuring no unauthorized use of the same.
- (d) Third-Party Sites. To the extent applicable to Customer's use of the Services, Customer shall be subject to and comply with any third-party website's current terms of service and use (such

as Twitter, Facebook, etc.) as such terms are set forth on such third-party website or otherwise, and we encourage Customer to review and become familiar with such terms.

- (e) Third-Party Agreements. If Customer enters into this Agreement as an agent for the end user of the Service, Customer shall bind the end user to a written agreement containing terms and conditions similar in all material respects to those of this Agreement and shall make Agility a third-party beneficiary of that agreement.

5. Term and Termination

- (a) Term. This Agreement shall commence on the Start Date and shall be effective for the Initial Term. Thereafter, this Agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term") unless written notice of non-renewal of the Agreement by Customer is provided to Agility at least ninety (90) days in advance of the commencement of the Renewal Term. All notices of non-renewal must be sent to renewals@agilitypr.com. The Initial Term and Renewal Term are collectively referred to herein as the "Term".
- (b) Termination. This Agreement may be earlier terminated as follows: (i) by Agility upon thirty (30) days prior written notice to Customer should Customer breach its material obligations and fail to cure such breach within such thirty (30) day period (nonpayment of an invoice for more than forty-five (45) days after the invoice date shall be considered a material breach pursuant to this provision); (ii) by Agility, immediately upon written notice, in the event Customer breaches the obligations of confidentiality, or becomes subject to a petition in bankruptcy or for liquidation (whether by or against Customer); a receiver is appointed in respect of the whole or a substantial part of Customer's assets, or if a Customer has been dissolved or liquidated or is insolvent; (iii) by Agility, pursuant to Section 5(c)(i), (ii) or (iii) below; or (iv) by Customer, pursuant to Section 5(c)(i) below.
- (c) Suspension of Services. Agility reserves the right to suspend provision of the Services and

Customer's access to the Services, in whole or in part, (i) on becoming aware of any legal authority which requires it to do so or which may expose it to any liability or claim if it does not do so; (ii) on becoming aware of Customer's use of the Product in a manner inconsistent with the Product Purpose and/or any other term or condition of this Agreement, or (iii) on non-payment of invoice when due. Agility will inform Customer in writing of any such suspension. If the suspension pursuant to subsection (i) continues for more than thirty (30) days without cure, either party shall be entitled to terminate this Agreement immediately upon written notice, and if the suspension pursuant to subsection (ii) or (iii) continues for more than thirty (30) days without cure, Agility shall be entitled to terminate this Agreement immediately upon written notice.

- (d) Survival. Sections 3(c), 4(c), 5, 6, and 8-13 shall survive termination of the Agreement for any reason.
- (e) Effect of Termination. If this Agreement is terminated for any reason, in addition to any remedies available at law or in equity, Agility will be entitled to payment for all Services delivered to Customer up to and including the effective date of termination.

If this Agreement is terminated for any reason other than pursuant to Section 5(c)(i), Agility will also be entitled to payment of all Fees for the remainder of the then current Term of the Agreement. Such Fees will become due effective upon termination.

Notwithstanding anything herein to the contrary, confidentiality obligations in the Agreement shall survive the termination of the Agreement or any portion thereof (i) with respect to Confidential Information that constitutes a "trade secret" (as defined by applicable law), for so long as such Information remains a trade secret; and (ii) with respect to all other Confidential Information, for a period of five (5) years from termination.

6. Fees; Taxes; Invoices

- (a) Fees. In consideration of the provision of the Services, and subject to Section 7 herein,

Customer agrees to pay the fees and expenses (collectively, the "Fees") described in the applicable Order, as well as any additional Fees that are agreed to in writing by both Customer and Agility in connection with the Services. Where Customer requests that the Services are provided to and/or invoiced to a third party, Customer shall remain liable for the payment of any Fees in connection with the Services.

- (b) Quoted Fees. All Fees set forth in the Order shall be subject to an annual increase, effective as of the commencement of each Renewal Term, of eight percent (8%) above the Fees for the immediately preceding Term.
- (c) Taxes. Customer shall be liable for all taxes, duties, levies, and other similar charges applicable to the Services received by Customer pursuant to the Agreement, other than income taxes on profits which may be levied against Agility.
- (d) Invoices and Payment Terms; Failure to Pay. Unless otherwise set forth in the applicable Order, Customer shall make payment to Agility within thirty (30) days of the date of Agility's invoice. Payments received after thirty (30) days will be subject to an interest charge of 1.25% per month. Payment will be made to the address set forth in such invoice. Customer will reimburse Agility for all legal fees and costs and collection costs and expenses incurred in connection with enforcement of the payment terms and collection of Fees with respect to this Agreement.

7. Change Notice

In the event Agility requires any change to the contractual terms, including, without limitation, to any Fees, in this Agreement, Agility shall advise Customer of such changes by email notice to Customer (the "Change Notice"). Customer may reject the terms of any Change Notice and terminate this Agreement in writing effective as of the end of the then-current Term provided Customer delivers notice of such termination to Agility within thirty (30) days of delivery of the Change Notice to Customer. Any such notice must be sent to renewals@agilitypr.com. If the Customer accepts the terms of the Change Notice

or does not respond to Agility within the applicable time period (which shall constitute deemed acceptance), then this Agreement shall continue subject to the revised terms of the Change Notice.

8. Confidentiality

Customer agrees to regard and preserve as confidential all information related to the business and activities of Agility and its affiliates that may be obtained in connection with this Agreement, including, without limitation, all information regarding pricing of Services, the Product, the Software and all systems and methodologies utilized by Agility in connection with the Services (the “Confidential Information”). Customer agrees to hold such Confidential Information in trust and confidence for Agility and not to use any such Confidential Information to its own benefit, or to the benefit of any other party, unless authorized in writing by Agility. For clarity, Customer agrees that it will not at any time pass, either directly or indirectly, to any competitor or potential competitor of Agility and the Services offered by Agility, any Confidential Information provided by Agility to Customer in connection with the Services, or any other information concerning Agility, the Services (including, for clarity, the Software and Product) or its system or methodologies.

Confidential Information shall not include information that is: (i) already known free of any restriction at the time it is obtained as evidenced by written records; (ii) subsequently learned from an independent third party free of any restriction; or (iii) available publicly.

9. Intellectual Property Rights; Ownership; Material Submissions

- (a) The parties recognize and agree that nothing contained in this Agreement shall be construed as granting or conferring any rights, by license or otherwise in any Confidential Information disclosed pursuant to this Agreement, or under any trademark, copyright, or any other intellectual property right, unless expressly agreed to in writing by the parties. All Confidential Information belonging to a party prior to the

signing of this Agreement shall remain the property of that party.

- (b) Agility reserves and will own all right, title and interest (including, without limitation, any and all intellectual property rights) in and to (i) any computer programs, software, processes, procedures, systems, technologies, platforms, techniques, ideas, designs, know-how, data, information, reports, documents, and other items expressed, conceived, developed, created, reduced to practice or acquired by Agility prior to the provision of Services to you, or during the Term of the provision of Services but outside the scope of the Services (the “Agility Materials”); and (ii) any improvements, discoveries or inventions relating to the Agility Materials whether or not patentable or copyrightable and whether or not reduced to practice, that are created, conceived, developed, discovered, invented or made by or for Agility, at any time.
- (c) Customer is responsible for and, as between Customer and Agility, retains sole ownership in all Content and materials it uploads to or transmits via any Product provided by Agility to Customer in connection with the Services (the “Customer Materials”). Customer agrees that it will not upload or transmit any Customer Materials to or via any Agility Product for which it does not have all the rights, clearances, permissions and licenses required by applicable law. Customer also agrees that it will not upload or transmit any Customer Materials to or via any Agility Product that are inappropriate, libelous or obscene, that violate any law, regulation or policy, or that contain any viruses or harmful technologies. By uploading or transmitting the Customer Materials to or via any Agility Product, Customer is representing and warranting that it is either the sole owner of the Customer Materials or that it has all the rights, clearances, permissions and licenses required by applicable law to do so.
- (d) Customer shall promptly notify Agility in the event that it becomes aware of any unauthorized use of the Services or any actual or suspected infringement of Agility’s intellectual property rights.

10. Representations and Warranties

Customer represents and warrants that: (i) it will not, directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the Product or any associated Software; modify, translate, or create derivative works based on the Product or any associated Software, or components thereof; extract or utilize any data from the Product or any associated Software (except as expressly contemplated by this Agreement); or remove any proprietary notices or labels; (ii) it will comply with the terms and conditions of this Agreement and any applicable Order; and (iii) it will comply with all applicable laws and regulations regarding the use, transmission, handling, security and privacy of any Content.

11. Warranty and Disclaimer

Agility shall use reasonable efforts consistent with generally accepted industry standards to maintain the Services in a manner that minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Agility, one of its affiliates, or by third-party providers, or because of other causes beyond Agility's reasonable control, but Agility shall use reasonable efforts to provide advance notice of any scheduled service disruption.

NOTWITHSTANDING THE ABOVE, AND TO THE EXTENT NOT PROHIBITED BY LAW, AGILITY AND ITS AFFILIATES MAKE NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SUITABILITY, OR NONINFRINGEMENT; (II) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE OR SERVICES; (III) OF ERROR-FREE OR UNINTERRUPTED SERVICES; OR (IV) REGARDING RESULTS TO BE OBTAINED FROM THE SERVICES.

12. Limitation of Liability

Agility's aggregate liability to Customer for actual damages from any cause whatsoever arising out

of or relating to this Agreement, including any Order, will be limited to an amount equal to twelve (12) months' Fees paid by Customer allocable to the Service giving rise to the cause of action; such liability, if any, will be limited to those Fees paid in the twelve (12) month period immediately preceding the incident giving rise to the cause of action. This limitation will apply regardless of the form of action, whether in contract or in tort, including negligence.

Should Customer's use of the Services as contemplated by this Agreement be determined to have infringed, or if, in Agility's reasonable judgment, be likely to infringe any intellectual property right, Agility may at its own option and expense: (i) procure for Customer the right to continue use of the Services or the relevant part thereof; or (ii) replace or modify the Services or relevant part thereof to make the Customer's use non-infringing. If neither of the above options are or would be available on a basis that Agility, in its sole discretion, finds commercially reasonable, then Agility may terminate this Agreement and Customer shall, on receipt of written notice from Agility to do so, immediately cease to use the relevant Services. In such circumstances, Agility shall refund any Fees paid under this Agreement that relate to the period after the date on which Customer's use of the Services ceased, which refund shall be Customer's sole remedy under this Agreement with respect to such termination.

Agility accepts no liability whatsoever for any information or advice it may provide regarding use of third-party copyright outside use within the Services or otherwise. Customer shall indemnify, hold harmless and defend Agility against all claims, liabilities, costs, expenses and damages that arise in connection with (i) any breach by Customer or any end-user of Customer of any third-party intellectual property rights or laws; and (ii) any failure by Customer or any end-user to comply with all applicable laws and regulations regarding the use, transmission, handling, security and privacy of any Content.

In no event will Agility be liable for incidental damages, indirect damages or consequential damages, or for any lost profits, revenue, data, business or use, even if Agility has been advised

of the possibility of such damages. The remedies provided in this Agreement are Customer's sole and exclusive remedies.

13. Miscellaneous

- (a) **Assignment/Subcontracting.** Customer may not assign, sub-contract or otherwise transfer this Agreement without Agility's prior written consent. Nothing in this Agreement, however, shall prevent Agility from assigning, sub-contracting, or otherwise transferring this Agreement to any third-party whatsoever.
- (b) **Authority.** The parties agree that any individual employed by Customer who requests changes to or additions to the Services or this Agreement has authority to do so unless otherwise advised in writing to the contrary by Customer.
- (c) **Cooperation.** Customer shall cooperate with Agility in all matters relating to the Services.
- (d) **Customer Support and Training.** Agility offers reasonable support and training to Customer as necessary for Customer to comprehend and use the Services effectively but reserves the right to charge for any support and training. Agility will not charge for any support and training until Customer and Agility have agreed to the applicable fees in writing.
- (e) **Dispute Resolution Procedures.** The parties will attempt to resolve through good faith discussion any dispute that may arise under this Agreement. Any such dispute may at any time, at the election of either party, be referred to a senior executive of each party for discussion and possible resolution. If the senior executives are unable to resolve the dispute within thirty (30) days after delivery of written notice of the dispute from one party to the other party, then either party may pursue any process or remedy available by law. The above will not prevent either party from resorting immediately to judicial process if injunctive or other equitable relief from a court is necessary to prevent injury to such party.
- (f) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all proposals or other prior

agreements, oral or written, and all other negotiations and communications between the parties relating to the Services. Headings are for reference only and do not affect the meaning of any term of this Agreement. Any reference to a purchase order or similar documentation on an invoice or other acceptance thereof is solely for Customer's convenience in record keeping, and no such reference or the provision of Services to Customer shall be deemed an acknowledgment of or an agreement to any terms or conditions associated with any such purchase order or other Customer-provided documentation. Any such associated terms and conditions shall be of no force and effect, and shall not in any way be deemed to amend, modify, supersede, alter or supplement this Agreement. If there is any inconsistency between the terms and conditions of these Standard Terms and Conditions and those of an Order and/or supplement, the Order and/or supplement, as applicable, shall control, unless specifically set forth therein to the contrary.

- (g) **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement, other than Customer's payment obligations, if and to the extent such default or delay is caused, directly or indirectly, by reason of fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country, strikes, lockouts or labor difficulties, any failure in electrical or air conditioning equipment, power outages, disruptions of network or telecommunication systems, unavailability of parts, or any other similar cause beyond the reasonable control of such party.
- (h) **Governing Law and Jurisdiction.**

If Customer's billing address is in Canada, this Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, regardless of the laws that might otherwise govern under applicable choice-of-law principles. The parties consent to the exclusive jurisdiction of the courts located in the Province of Ontario with respect to any legal proceedings

in connection with, or arising from, this Agreement.

If Customer's billing address is in the United Kingdom, the EU or the EEA, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales law regardless of the laws that might otherwise govern under applicable choice-of-law principles. The parties consent to the exclusive jurisdiction of the courts of England and Wales with respect to any legal proceedings in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

If Customer's billing address is in the United States or any other country not referenced above, this Agreement will be governed by and construed under the laws of the State of New Jersey, United States of America, regardless of the laws that might otherwise govern under applicable choice-of-law principles. The parties consent to the exclusive jurisdiction of the courts located in the State of New Jersey, United States of America, with respect to any legal proceedings in connection with, or arising from, this Agreement.

- (i) If any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions will continue unimpaired.
- (j) Non-Exclusive Agreement. Nothing in this Agreement precludes Agility from carrying out the Services or any similar services for any other person, firm or entity.
- (k) Notices. Unless otherwise indicated or agreed upon, all written notices which are required or may be given pursuant to this Agreement must be sent by certified mail or by a recognized courier service such as Federal Express or UPS, and delivered, to the address provided in the Order (which address may be modified from time to time). A copy of all Notices to Agility pursuant to this Agreement shall be sent to legal@agilitypr.com.

- (l) Relationship of the Parties. Nothing in this Agreement shall be construed as creating a joint venture, partnership, or agency relationship between the parties.
- (m) Waiver. No waiver by either party of any default will be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.