



EXHIBIT C
STANDARD TERMS & CONDITIONS

OptifiNow, as Licensor, is engaged in the business of providing access to Software (as defined below) and Licensor's application server;

Customers of OptifiNow are Licensee who desire to retain Licensor to perform the services provided for in this Agreement.

NOW, THEREFORE, Licensor and Licensee agree as follows:

1) Grant of License

- a) Subject to the terms and conditions herein, Licensor hereby grants Licensee a nonexclusive license to (i) access and execute OptifiNow (the "Software") on Licensor's application server over the Internet, and (ii) transmit data related to Licensee's use of the Software over the Internet.

2) Use and Access

- a) Subject to the restrictions on use as set forth herein, Licensee will have access to the Software and Licensor's application server for the purpose of using the Software for its intended purpose and in accordance with the specifications set forth in Exhibit B relating to the Software provided by Licensor. Such use and access will be continuous on a 24/7 basis except for interruptions by reason of maintenance or downtime beyond Licensor's reasonable control.
- b) Licensee will use the Software only for its internal business operations and will not permit the Software to be used by or for the benefit of anyone other than Licensee, except that the license granted to Licensee hereunder includes use by Licensee's affiliates and permitted third parties in accordance with the terms of this Agreement. For purposes hereof, "permitted third parties" are third party contractors or consultants engaged by Licensee in connection with the internal business operations of Licensee. Licensee will not have the right to re-license or sell rights to access and/or use the Licensed Software or to transfer or assign rights to access or use the Software, except as expressly provided herein. Licensee may not modify, translate, reverse engineer, decompile or create derivative works based upon the Software. Licensee agrees to use the Software in a manner that complies with all applicable laws including intellectual property and copyright laws. Licensor expressly reserves all rights not expressly granted to Licensee herein.
- c) Licensee will not: (i) transmit or share identification or password codes to persons other than authorized users, (ii) permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not authorized users, or (iii) permit access to the Software through a single identification or password code being made available to multiple users on a network.
- d) Licensor will provide commercially reasonable space on the application server for Licensee to use for storage of data necessary for use of the Software.



3) Technical Support

- a) OptifiNow technical support staff will be available to assist Client with problems and questions regarding the Application. OptifiNow will provide telephone and/or email support between 7:00am and 6:00pm Monday – Friday PST (excluding United States federal holidays).

4) Ownership of Intellectual Property

- a) Licensee acknowledges and agrees that the Licensor shall retain ownership of all right, title and interest in know-how, techniques, modeling, market data, projections, survey work, questionnaires and software tools used by the Licensor in performance of the services hereunder shall remain Licensor's exclusive property.
- b) Licensee shall not (i) create derivative works based on the Software, (ii) copy, frame or mirror any part or content of the Software, other than copying or framing Licensee's own intranets or otherwise for Licensee's own internal business purposes, (iii) reverse engineer the Software, or (iv) access the Software for the purpose of (a) building a competitive product or service, or (b) copying any features, functions or graphics of the Software.

5) Confidentiality

- a) The term "Confidential Information" shall include, without limitation, information provided to either party by the other party that such other party has designated as confidential, such as Subscriber Data (as defined below), financial, technical, business, and credit information, including without limitation, all market analyses and market expansion plans, all revenue and profit analyses and projections and all commission structures and statements, account lists and information and all technical information. Confidential Information includes any information that has been identified as confidential or proprietary or reasonably appears to be confidential or proprietary in nature because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. Each party agrees that during and after the term of this Agreement, neither it nor any person, firm, corporation or other entity affiliated with, owned in whole or in part by, employed by or otherwise connected with it, shall directly or indirectly, without the express written consent of the other party, divulge, use, sell, exchange, furnish, give away, or transfer in any way any Confidential Information.
- b) All data pertaining to Licensee disclosed to Licensor in connection with the performance of this Agreement and residing on Licensor's application server ("Subscriber Data") will be held as confidential by Licensor and will not, without the prior written consent of Licensee, be disclosed or be used for any purposes other than the performance of this Agreement. Licensor will safeguard the confidentiality of all Licensee Confidential Information, including Subscriber Data, using the same standard of care that Licensor uses for its own confidential materials (in no event less than reasonable care). This obligation does not apply to data that: (i) is or becomes, through no act or failure to act on the part of Licensor, generally known or available; (ii) is known by Licensor at the time of receiving such information as evidenced by its written records; (iii) is hereafter



furnished to Licensor by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by Licensor as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Licensee. Further notwithstanding the forgoing, disclosure of data will not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body of the United States; (ii) is otherwise required by law; or (iii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

6) Representations, Warranties, and Disclaimer

a) Licensor represents and warrants that:

- i. it has the right to operate, use, and license the Software and any other services hereunder to Licensee and otherwise perform its obligations under this Agreement;
- ii. the Software, any other services hereunder, and Licensee's use thereof in accordance with the terms of this Agreement do not and will not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of a third party;
- iii. neither the Software nor any other services hereunder do or will contain any viruses, Trojan horses, worms, time bombs, locks, backdoors, counters, timers, spyware or other malware or any other computer programming devices that may damage Licensee's systems or data or prevent Licensee from operation or use of its systems, data or the like; and
- iv. the Software and any other services hereunder shall perform in accordance with the specifications set forth on the service level agreement.
- v. Licensor warrants the Software is developed and will be provided in conformity with generally prevailing industry standards and the specifications set forth on Exhibit B. Licensee must report any material deficiencies in the Software to Licensor in writing within thirty (30) days of Licensee's discovery of the defect, and Licensor shall use commercially reasonable efforts to correct, at no additional charge to Licensee, the deficiencies within a reasonable period of time of being contacted by Licensee regarding the breach of said warranty. Licensor may also offer to provide access to replacement Software within a commercially reasonable time, subject to Licensee's acceptance which shall be at Licensee's sole discretion. If none of the foregoing alternatives are deemed acceptable at Licensee's judgment, Licensee may terminate this Agreement and, in the event of such termination within the initial one-year term of this Agreement, Licensee shall be entitled to a refund of all deployment fees paid by Licensee as well as the pro rata portion of any pre-paid maintenance and service fees paid by Licensee. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR**



TO THE EFFECTIVE DATE OF THIS AGREEMENT. LICENSOR EXPRESSLY
DISCLAIMS ALL OTHER WARRANTIES.

7) Limitation of Liability, Indemnification, and Insurance

- a) Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the use of the Software, whether in contract, tort or otherwise, even if the other has been advised of the possibility of such loss or damages.
- b) Licensor will indemnify and hold Licensee, its affiliates, and their respective directors, officers, employees and agents, harmless from any claims, actions, damages, losses, liability, and expense (including reasonable attorneys' fees) (collectively, "Claims") arising out of or in conjunction with Licensor's breach of its obligations, representations or warranties under this Agreement.
- c) Licensee will indemnify and hold Licensor harmless against any Claims incurred by Licensor arising out of or in conjunction with Licensee's breach of its obligations, representations or warranties under this Agreement.
- d) Licensor's total liability under this Agreement with respect to the Software, regardless of cause or theory of recovery, will not exceed the total amount of licensing fees paid by Licensee to Licensor during the six month period immediately preceding the occurrence or act or omission giving rise to the claim, provided that such limitation of liability shall not apply to liability arising from (i) Licensor's indemnification obligations hereunder, (ii) Licensor's breach of confidentiality obligations hereunder, or (iii) Licensor's negligence or willful misconduct.

8) Transition Period

- a) The terms of the Customer Agreement provides that a Licensee or Licensor can terminate the Customer Agreement after 12 months of service by submitting a written notice of cancellation providing for a mutually agreed upon transition period of 90 days or more. During the mutually agreed upon transition period, the Licensee will be billed monthly seat license fees equal to the monthly average of seat license fees billed for the previous 3 months.

9) Relation of Parties

- a) Nothing in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

10) Non-assignment

- a) Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party, and such consent will not be unreasonably withheld. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

11) Attorneys' Fees



- a) If any litigation is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

12) Severability

- a) If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

13) Force Majeure

- a) Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

14) Waiver and Modification

- a) The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.