



## License and Services Agreement and TERMS OF USE

Effective Date: September 7, 2020

Welcome to Positivly.com, which is operated by Positivly, LLC ("Positivly," "the Company" "we," "us" or "our"). This License and Services Agreement and Terms of Use (this "Agreement" or "Terms") sets forth the terms and conditions for your use of any Positivly website(s), products and services including but not limited to our finance personality assessment platform (the "Site") that allows you ("Customer," "you" or "your") to research, model and analyze potential investment strategies and preferences using certain data and information tools, features, and services provided by Positivly and its agents, third-party vendors' or licensors' ("Third Party Service Providers") on or through our platform (collectively, the "Services"), in accordance with the terms and conditions of this Agreement. In addition, and as set forth further below, if you choose to use certain Services on Positivly, you not only agree to Positivly's Terms, but also to the Terms of Service for any Third Party Service Providers. Certain services may be subject to an additional Investment Advisory Agreement, which solely governs investment advice provided pursuant to that agreement.

For the avoidance of doubt, these Terms and the Privacy and Cookies Policies may be accepted electronically, and it is the intention of all parties that such acceptance shall be deemed to be as valid as an original signature. If any term or condition of this Agreement or the Terms of Service for any Third Party Service Providers is unacceptable to you, please do not visit, access, or use the Site or Services.

**NOTICE:** Investing involves significant risks and potential for financial loss, including the loss of all the value of your assets. You should therefore carefully consider whether trading or holding assets is suitable for in light of your financial condition. By using the Services, you acknowledge and agree that you are aware of, and assume, all risks associated with any investment of such assets, referral to a financial advisor or disclosure of your investment preferences and you are solely responsible for conducting your own independent analysis of the risks specific to assets, investments and the Services. Positivly is not responsible or liable for any such risks or adverse outcomes. In exchange for using the Service, you hereby agree not to hold the Company or its

Third Party Service Providers liable for any possible claim for damages arising from any decision you make based on information made available to you through the Service or the Site.

## **1. AGREEMENT CONDITIONS**

Positively reserves the right to, in its sole discretion, change, amend or modify the Terms at any time. You acknowledge and agree that Positively may notify you of any changes by sending you an email notifying you of the changes, updating the "Effective Date" at the top of the Terms and/or by another means. By clicking an "Agree" button presented with the amended Terms or by continuing to access or use any of the Services after a revision to the Terms, you confirm your agreement to the amended Terms.

Unless stated otherwise, any new features or enhancements to the Service shall be subject to this Agreement in addition to any terms that may be applicable. You are responsible for regularly reviewing this Agreement and any amendments or modifications hereto. If you do not agree to the amended terms, you must stop using the Service. Continued use of the Service after any changes take effect will constitute your acceptance of such changes.

If you accept this Agreement including all of its terms, please click on the check box next to the Terms of Use before clicking the "Submit" button. You may also wish to print out a copy of this Agreement for your records. If you do not accept this Agreement, then you will not be able to access the Service.

## **2. ELIGIBILITY**

By registering for a Positively Account (defined below), you represent and warrant that you (a) are at least 18 years of age or of legal age to form a binding contract under applicable law; (b) are an individual, legal person or other organization with full legal capacity and authority to enter into these Terms; and (c) have not previously been suspended or removed from using our Services.

Positively maintains the right to select the markets and jurisdictions in which the Services are available, and may, at its sole discretion, restrict or prohibit the Services in certain locations ("Restricted Locations"). For that reason, the range of Services available to you will depend upon the location from which you access the Services. You may not use the Services if you are located in, or a citizen or resident of, any Restricted Location, or where your use of the Services would be illegal or otherwise violate any applicable law. Positively currently only provides its paid Services to residents of the United States.

## **3. ACCOUNT REGISTRATION AND REQUIREMENTS**

### **a. Registration**

When you register for the Service (“Registration”) and create an account (“Account”), we may ask you to give us certain identifying information, including non-public personal information (“Account Information”). You agree to provide true, accurate, current and complete information about yourself. You also agree not to impersonate any person or entity, misrepresent any affiliation with another person, entity or association, use false headers or otherwise conceal your identity from the Company for any purpose. You may not transfer your Account to anyone else without our prior written permission. We agree to treat with care your Account Information that you entrust to us, in accordance with our Privacy Policy.

The Company may offer you the opportunity to personalize the Service or your online experience. While certain personalization features can provide a more convenient way to access the data and features most relevant to you, be aware that “cookies” and other similar identification techniques are used to associate you with the computer or electronic device that you are using. If you access the Service from a public location or if you otherwise share a computer or electronic device, some personalization features could reveal non-public personal information about you to others. You alone are responsible for deciding whether a particular personalization feature is appropriate for you and for any consequences that result from your decision.

For your protection and the protection of our other customers and Site users, you agree to maintain your Account Information (including passwords, user names, and screen names) in strict confidence and not to share Account Information with any third party, including, but not limited to colleagues, co-workers, advisors or agents. In the event that you share your Account Information with a third party, the Company will consider their activities to have been authorized by you. You are solely responsible for all transactions initiated, messages posted, statements made, or acts or omissions that occur within the Service through the use of your Account. You agree that the Company is not liable for any damage or interruptions caused by any computer viruses, spyware, or other malware that may affect your computer or other equipment, or any phishing, spoofing, or other attack or otherwise. You agree to immediately notify the Company if you become aware of any loss or theft of your Account Information or any unauthorized use or acquisition of your access to the Service or any other breach of security.

**b. Identity Verification**

When registering for an Account, you agree to provide current, accurate, and complete information for all required fields on the registration page, including your full legal name, address, email address, phone number, taxpayer or government identification information, proof of identity, and bank account details, credit card numbers and/or digital wallet information.

You hereby authorize the Company, directly or through third parties, to make any inquiries we deem necessary to verify your identity, protect against fraud or other financial crime, and/or comply with our legal obligations under various anti-money laundering (“AML”) obligations, such

as under the U.S. Bank Secrecy Act (“BSA”). When we carry out these required inquiries, you acknowledge and agree that your personal information may be disclosed as required to certain fraud prevention or financial crime agencies and that these agencies may respond to our inquiries in full. You further authorize the Company to take whatever action we deem required under applicable laws and reasonably necessary based upon such inquiries.

**c. Account Usage**

You are the only person authorized to use or access your Account. By registering for an Account, you agree and represent that you will use the Services only for your own personal, non-commercial use, and not on behalf or for the benefit of any third party, unless you have obtained prior approval from the Company. You further agree and represent that you will use the Services only in a manner that complies with all applicable laws. You are solely responsible for all activity that occurs under your Account or with your User ID, including any fraudulent activity.

**4. PRIVACY**

Positively takes the privacy of its users seriously. Positively’s Privacy Policy provides a summary of its practices relating to the collection, sharing and use of covered personal information. You represent and warrant that you have read the Privacy Policy before providing any of your personal information to Positively.

**5. RIGHTS TO USE SERVICES**

**a. Limited License.**

Subject to the terms and conditions of this Agreement and your Customer payment obligations, the Company hereby grants to Customer and Authorized Users (as defined below) a revocable, non-exclusive, non-sublicensable, non-transferable, limited license (“License”) during the Term of this Agreement to use the Services, Site and Software, as defined herein and in accordance with this Agreement, any Subscription Agreement, or any Investment Advisory Agreement. You shall have no right to receive, use or examine any source code or design documentation relating to the Services or Software except as provided specifically agreed in writing. The Software, or any portion thereof, may not be used by or on behalf of, accessed by, re-sold to, rented to, or distributed to any other party. The license granted herein automatically terminates upon the Company’s suspension or termination of your Account or your ability to access or use the Services, or upon your cancellation of your Account. All rights not expressly granted under these Terms are hereby reserved. Delivery of the Software and Services is conditioned upon completion of the Customer onboarding process as required.

**b. Definitions**

- i. "Authorized Users" means those affiliates, employees, contractors, customers, agents and other authorized individuals identified by Customer as permitted to use the Software.
- ii. "Software" means the source code, object code or underlying structure, ideas or algorithms of any software, documentation or data related to, provided with, or used to provide the Service or the commercial versions of software product/s, in object code form only (and accompanying documentation, if applicable), identified in this Agreement and any SOW or PO incorporated herein, including all enhancements thereto, and made available by the Customer to Customer and its Authorized Users as part of the Software.

**c. Limitations On Rights Granted For Use Of Software; Third Party Software; Limited Location License.**

Subject to the terms and conditions of this Agreement and your payment obligations, the Company hereby grants you the right to access and use the Software for the sole purposes of discovering, analyzing, researching, and evaluating investment preferences, strategies, products, including but not limited to mutual funds, ETFs, and model portfolios and financial advisors (the "Purpose").

Unless otherwise agreed in writing, you do not acquire under this Agreement any right or license to use the Software or any component or derivative thereof, in excess of the Purpose, scope and/or duration of the rights set forth herein, during the Term and any renewal thereof. If this license is not renewed or extended as provided herein, all rights to access and use the Software will terminate at the expiration of such Term.

Each user accessing the Software must be an Authorized User and must have access to only those functions for which the Company has granted specific user rights. Use may occur by way of an interface delivered with or as a part of the Software by the Company, Customer or a third party approved by the Company. The license granted hereunder is limited to the number of Authorized Users presented in the payment terms of the Purchase Form. Customer hereby represents and warrants that each such user will access and use the Software solely for the Purpose and for no other reason.

**6. USE OF THE SERVICE; OWNERSHIP**

The Services are proprietary to Positivly. Any materials displayed or performed or available on or through the Services, including but not limited to, text, graphics, data, articles, photos, images, surveys, illustrations (all of the foregoing, the "Content") are protected by copyright and/or other intellectual property laws. You agree not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works based on, or otherwise exploit any of the Services. You acknowledge and agree that Positivly transfers no ownership or intellectual property interest or title in and to the Content or the Services to you or anyone else in connection with your use of the

Services. You acknowledge that the Service and the Software are protected by ownership and intellectual property rights of the Company or its Third Party Service Providers (as applicable). Under no circumstances shall you be deemed to receive title to any portion of any Software or Service, title to which at all times shall vest exclusively in the Company or its Third Party Service Providers (as applicable).

Positivly may, in its sole discretion, remove any Content from the Services at any time, for any or no reason and without notice.

You represent and warrant that you will not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, without the prior consent of the owner of that Content, or in a way that violates the Company's rights or the rights of any other third party.

You shall not derive, disassemble or otherwise attempt to discover or derive the source code, source files, underlying ideas or algorithms or structure of all or any portion of the Software by any form of reverse engineering, disassembly, or decompilation.

You may download material displayed on the Service or the Site for non-commercial, personal use. If you do so, you agree not to remove or alter any copyright and other proprietary notices contained on such materials. You may not use, distribute, modify, translate, or create derivative works or transmit, or post the content of Service or the Site for public or commercial purposes, including any text, images, audio, or video.

The following requirements apply to your and your Authorized Users' use of the Service and the Site:

- i. You will not rent, lease, distribute, sell, resell, assign, or transfer its rights to use the Software.
- ii. You will not publish or disclose to third parties any evaluation of the Software without Positivly 's prior written consent.
- iii. You will not access, or attempt to access, any data, software, systems, networks or other property of Positivly or a Third Party Service Provider while accessing and using the Software.
- iv. You will not use any electronic communication feature of a Service for any purpose that is unlawful, tortious, abusive, intrusive on another's privacy, harassing, libelous, defamatory, embarrassing, obscene, threatening or hateful.
- v. You will not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights.
- vi. You will not collect or store personal data about other users.

- vii. You will not use the Service or the Site for any commercial purpose not expressly approved by us or our Third Party Service Providers in writing.
- viii. You will not upload, post, e-mail or otherwise transmit any material that contains viruses, worms, Trojan horses or any other contaminating or destructive features or any other computer code, files or programs which might interrupt, limit or interfere with the functionality of the Service, the Site, or any computer software, hardware or telecommunications equipment.
- ix. Use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology to access, acquire, copy or monitor the Service or the Site.

A breach of this subsection shall constitute unauthorized use or use in excess of the authorized use of the Software and any third-party hosting service.

## **7. PROHIBITED USE**

You are prohibited from accessing or using the Services, or registering for an Account, if you: (1) have been identified as a "Specially Designated National" by the Office of Foreign Assets Control; (2) have been placed on the U.S. Commerce Department's Denied Persons List; or (3) are located in, under the control of, or a national, citizen or resident of any Restricted Locations, or any country to which the United States has embargoed goods or services.

You represent, warrant, and agree that you will not use or interact with the Services, including by contributing any Content or User Information (as those terms are defined herein), in a manner that: (1) Jeopardizes the security of your Account or any other user's Account (such as allowing someone else to log in to the Services as you); (2) Violates the security of any computer network, including any attempts to hack users' passwords or security encryption codes; (3) Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure); (4) "Crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means); (5) Copies or stores any significant portion of the Content; (6) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying information of or relating to the Services; or (7) Brings disrepute to, or otherwise harms the reputation of, Positivy or any of its affiliates or Third Party Service Providers.

You are further prohibited from using the Services in any manner that is not expressly and unambiguously authorized by these Terms.

## **8. PERMITTED DATA USE; CUSTOMER CONTENT**

You hereby grant the Company and its Third Party Service Providers a non-exclusive, transferable, world-wide, royalty-free, sublicensable transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, copy, modify, create derivative works of, display, perform, publish and distribute, in any form, medium or manner, any data that you provide for use in connection with the Service (including Account Information) for purposes of providing the Service, usage analytics, product development and other related purposes. Furthermore, the Company and its Third Party Service Providers shall have the right to compile, distribute, and otherwise exploit anonymized, aggregated data derived from your Account for their respective business purposes, including assessing the aggregate usage of the Service generally. You represent and warrant that: (i) you own the user information or have the right to grant the rights and licenses in these Terms, and (ii) the Company's use of the user information as licensed herein does not and will not violate, misappropriate or infringe on the rights of any third party.

You understand and agree that the Company, in performing the required technical steps to provide the Services to users (including you), may need to make changes to your User Information to conform and adapt that user information to the technical requirements of connection networks, devices, services, or media, and the foregoing licenses include the rights to do so. The Company, at its sole discretion, may remove any user content from any of the Services at any time for any or no reason.

You hereby grant a non-exclusive, world-wide, royalty-free license to the Company and its Third Party Service Providers to reproduce, disclose, transmit, publish, broadcast, or post any communications or material of any kind that you e-mail, post or otherwise transmit through the Service, including data, questions, comments, or suggestions (your "Communications") either on the Site or elsewhere with no liability or obligation to you. You hereby grant permission to the Company and its Third Party Service Providers to use any ideas, concepts, know-how, or techniques contained in your Communications for any purpose including, but not limited to, developing and marketing products using such information. The Company and its Third Party Service Providers, each of their respective affiliates and agents, are entitled, but not obligated, to review or retain your Communications. We and our Third Party Service Providers may monitor your Communications to evaluate the quality of service you receive, your compliance with this Agreement, the security of the Service, or for other reasons. You agree that these monitoring activities will not entitle you to any cause of action or other right with respect to the manner in which we or our Third Party Service Providers monitor your Communications and enforce or fail to enforce the terms of this Agreement or any other guideline, terms and conditions, or policies relating to the Service or the Site. In no event will we or our Third Party Service Providers be liable for any costs, damages, expenses or any other liabilities incurred by you as a result of any monitoring activities.

## **9. THIRD PARTY SERVICE PROVIDER SOFTWARE AND SERVICES; THIRD PARTY BENEFICIARIES**

You acknowledge that, to the extent the Company licenses some or all of the Software or other components of the Service from Third Party Service Providers (with or without notice to you), (a) the Company may make available to you certain third party software or services (the use of which may require your acceptance of such third party's license agreement or terms and conditions), which shall be deemed part of the Service; and (b) the Company shall not have any responsibility to update such third party software or services, but such Third Party Service Providers, may (without any obligation) make them available to the Company for use in connection with the Service.

You consent and authorize the Company to delegate the authorizations you provide to the Company to its Third Party Service Provider(s) as the Company deems necessary or desirable to provide the Service to you. You agree that the terms and conditions of this Agreement, including any of the other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement, inure to the benefit of such Third Party Service Providers and such Third Party Service Providers are deemed to be third party beneficiaries of this Agreement, including any other terms, conditions, warranty disclaimers and liability disclaimers incorporated into this Agreement. You also agree that all references to "the Company" within this Agreement and any incorporated terms are also deemed to include, where applicable, the Company's agents, vendors and licensors, including Third Party Service Providers. To protect the privacy and security of your Account Information, Third Party Service Providers will only be authorized to use or maintain your Account Information only in accordance with our Privacy Policy.

Furthermore, you acknowledge and agree that (1) you assume the risk of use of the Software; (2) you are responsible for selecting appropriate remediation for, and resolving, any issues found on your network or system that prevents the proper functioning of the Software; and (3) the Company is not liable for, or responsible to, remediate any issues found on your network or system that prevents the proper functioning of the Software.

## **10. THIRD PARTY CONTENT**

The Services may contain links, access or connections ("links") to third party websites, applications, services or other materials (collectively "Third Party Content") that are not affiliated, owned or controlled by the Company. You accept and acknowledge the risks of accessing any Third Party Content, and that the Company has no control over and assumes no responsibility for and cannot monitor, verify, censor or edit any Third Party Content.

The fact that we have provided a link to a site is not an endorsement, representation, authorization, sponsorship, or affiliation with respect to such site, its owners, or its providers. You expressly

waive as against the Company, and the Company expressly disclaims, any liability, losses or damages arising from your use or access or as a result of any actions taken in reliance on any Third Party Content. We encourage you to be aware when you leave the Services, and to read the terms and conditions and investigate the source of any Third Party Content that you visit or use.

**a. Financial Market Information; No Warranty; Financial Information**

The Service may make available certain financial market data, quotes, news, research, analyst research, reports and opinions or other financial information (collectively, the "Market Information") that has been independently obtained by certain financial market information services, financial publishers, various securities markets including stock exchanges and their affiliates, investment bankers and other providers or has been obtained by the Company or its Third Party Service Providers (collectively, the "Information Providers"). Neither the Company nor our Third Party Service Providers guarantee or certify the accuracy, completeness, timeliness or correct sequencing of the Market Information made available to you by the Information Providers or any other third party transmitting the Market Information (the "Information Transmitters"). You understand that none of the Market Information available through the Service constitutes a tailored recommendation or solicitation that you should purchase or sell any particular security or other asset without further analysis including the investors specific financial circumstances and needs. Neither the Company or nor Third Party Service Providers endorse or approve any of the Market Information and only make such Market Information available as a service and convenience you. You will not redistribute or facilitate the redistribution of Market Information, nor will you provide access to Market Information to anyone who is not authorized by us or our Third Party Service Providers to receive Market Information. If you are a securities broker, dealer, banker, or investment advisor, you agree not to use Market Information provided by us or our Third Party Service Providers for any purpose related to your business other than for the Purpose of this Agreement.

**All Market Information is provided on an "as-is" basis. You agree that neither the Company, nor its Third Party Service Providers shall be liable in any way for the accuracy, completeness, timeliness or correct sequencing of the Market Information, or for any decision made or action taken by you relying upon the Market Information. Neither the Company, nor its Third Party Service Providers, guarantee any future performance, nor any specific level of performance of any trade nor the success of any investment decision or strategy. Neither the Company nor any of its Third Party Service Providers shall be responsible for investment decisions, damages, or other losses resulting from use of the Service.**

**11. CONDUCT; COMPLIANCE WITH LAWS**

You shall be solely responsible for actions and the actions of its Authorized Users while using the Software. You agree: (1) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the Software, including, if applicable and without limitation, intellectual property and privacy laws, including, without limiting the foregoing, the U.S. Computer Fraud and Abuse Act; (2) to take all necessary steps to avoid uploading or distributing malware, viruses, corrupted files, or any other software or programs that may damage the operation of the Software or another's computer or mobile device; (3) not to use the Software for illegal, fraudulent, harmful, unethical or inappropriate, deceptive, threatening, harassing, defamatory, or otherwise objectionable purposes in Positivly's sole discretion; (4) not to use the Software to distribute, promote or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, pornographic, indecent, defamatory, hateful, racially, ethnically, unwanted or otherwise objectionable material of any kind or nature; (5) not to use any information or other knowledge gained through use of the Services to provoke an interference with any patent application which Positivly has filed with respect to the Services, or to amend any claim in any pending patent applications to expand such claim to read on, cover or dominate any invention (whether or not patentable) relating to the Services; (5) not to intentionally interfere with another customer's use and enjoyment of the Software or another person or entity's use and enjoyment of similar services; and (6) to comply with all regulations, policies and procedures of Third Party Service Providers. You acknowledge and agree that the Company is not liable for any use of the Software in your networks and systems that constitutes infringement of a third party's intellectual property rights to the extent that such infringement would not occur outside your network or system.

## **12. FEES AND TAXES**

### **a. Fees**

By using the paid Services, you agree to pay the Company any and all applicable fees for the Term and Extended Term as defined herein. You authorize the Company to charge or deduct any applicable fees from your Account. You agree to pay all fees and charges in accordance with the billing terms set forth in this Agreement and any Purchase Order (collectively, "Fees"). All Fees are quoted and payable in United States Dollars. In addition to such Fees, you shall pay all applicable sales, use and other taxes or duties (excluding taxes based on the Company's net income).

### **b. Payments**

The Fees will be invoiced monthly, in advance, unless otherwise stated in the Subscription Agreement and/or Investment Advisory Agreement. Invoices will be sent to the address on the relevant agreement.

### **c. Additional Authorized Users**

During the Term of this Agreement, in order to (i) modify the list of Authorized Users, (ii) order additional licenses, or (iii) increase the Term, you must obtain the Company's advance written consent.

### **13. TERM**

This Agreement commences on the Effective Date of the relevant agreement and shall continue for an initial period of one (1) year (the "Initial Term"). At the end of the Initial Term, the Agreement will automatically renew for additional twelve (12) month periods (the "Extended Term") pursuant to the terms hereof unless the parties negotiate a further amendment or one party gives the other party written notice of non-renewal at least sixty (60) days prior to the end of the Term (the Initial Term and any Extended Term are collectively referred to herein as the "Term").

### **14. TERMINATION**

#### **a. Breach**

Either party may terminate this Agreement upon written notice if the other party has breached a material term of this Agreement and has not cured such breach within sixty (60) days of receipt of notice from the non-breaching party specifying the breach.

#### **b. Insolvency**

Either party may terminate this Agreement if (i) the other party has a receiver appointed for it or its property; (ii) the other party makes an assignment for the benefit of creditors; (iii) any proceedings are commenced by, for or against the other party under any bankruptcy, insolvency or debtor's relief law; or (iv) the other party is liquidated or dissolved.

#### **c. Failure to Pay/Customer Conduct**

The Company may suspend or terminate access to the Software, at its sole option, with or without notice to Customer, if (i) any payment is delinquent by more than thirty (30) days, or (ii) Customer breaches this Agreement.

#### **d. Termination for Convenience**

Either party may terminate this Agreement for convenience upon written notice delivered to the other party not less than ninety (90) days prior to the effective date of termination. Customer shall remain obligated to make all payments for the Software and applicable services during the termination period.

#### **e. Effect of Termination**

The Company shall not be liable to Customer or any third party for suspension or termination of Customer's access to, or right to use, the Software under this Agreement. If Customer or the Company terminates this Agreement, Customer will be obligated to pay the pro-rated balance due for the Software provided prior to the effective date of termination. Upon the effective date of expiration or termination of this Agreement for any reason, whether by Customer or the Company, Customer's right to use the Software shall immediately cease and Customer and its

Authorized Users' access to the Software will terminate. The terms of this Agreement shall survive its expiration or termination for any reason as described herein in the Survival section of this Agreement.

## **15. DISCLAIMER OF WARRANTIES**

The Company covenants, represents and warrants that: (a) access to the Software will be provided in compliance with applicable laws and regulations, including license and permit requirements; (b) it has authority to enter into this Agreement; and (c) it has the right to grant the rights granted herein, including appropriate written agreements with its employees, agents and subcontractors and Third Party providers, if any. Customer covenants, represents and warrants that it will access and use the Software in strict adherence to the rights and limitations described herein and in compliance with all applicable law.

None of the Company, its licensors, partners, suppliers or service providers make any representations or warranties concerning any Content or other material contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services, including, without limitation, any Financial Market Information for any assets. The Company will have no liability or responsibility for any permanent or temporary inability to access or use any Services.

THE SERVICE IS PROVIDED "AS-IS" AND "AS-AVAILABLE", WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. THE COMPANY, ITS THIRD PARTY SERVICE PROVIDERS AND EACH OF THEIR RESPECTIVE AFFILIATES (COLLECTIVELY, THE "DISCLAIMING PARTIES") DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION (INCLUDING, WITHOUT LIMITATION, THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY SURVEY, TEST, PORTFOLIO OR ACCOUNT INFORMATION, HISTORICAL PERFORMANCE AND ANALYTIC, FORWARD LOOKING ANALYCS, COST BASIS, OR OTHER INFORMATION ABOUT YOU OR YOUR ACCOUNT MADE AVAILABLE THROUGH THE SERVICE), TITLE AND NON-INFRINGEMENT. THE DISCLAIMING PARTIES FURTHER DISCLAIM ANY WARRANTY REGARDING NONINTERRUPTION OF USE, DELAY, FREEDOM FROM BUGS, AND THAT USE OF THE SERVICE IS ERROR-FREE. YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT ANY USE OF THE SERVICE IS AT YOUR SOLE RISK. YOU ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LAWS. THE SERVICE MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT NONE OF THE DISCLAIMING PARTIES OPERATE OR CONTROL THE INTERNET AND THAT (A) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE OR (B) UNAUTHORIZED USERS (SUCH AS HACKERS) MAY ATTEMPT TO OBTAIN

ACCESS TO YOUR COMPUTERS OR NETWORKS, AND DAMAGE THEM OR YOUR DATA OR OTHER ACCOUNT INFORMATION PROVIDED BY YOU. YOU ACKNOWLEDGE THAT INFORMATION YOU STORE OR TRANSFER THROUGH THE SERVICES MAY BECOME IRRETRIEVABLY LOST OR CORRUPTED OR TEMPORARILY UNAVAILABLE DUE TO A VARIETY OF CAUSES, INCLUDING SOFTWARE FAILURES, PROTOCOL CHANGES BY THIRD PARTY PROVIDERS, INTERNET OUTAGES, FORCE MAJEURE EVENT OR OTHER DISASTERS INCLUDING THIRD PARTY ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE OR OTHER CAUSES EITHER WITHIN OR OUTSIDE OUR CONTROL. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP AND MAINTAINING DUPLICATE COPIES OF ANY INFORMATION YOU STORE OR TRANSFER THROUGH THE SERVICES. THE DISCLAIMING PARTIES SHALL IN NO WAY BEAR ANY RESPONSIBILITY OR LIABILITY FOR ANY SUCH ACTIVITIES.

#### **16. INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY**

YOU AGREE TO INDEMNIFY AND HOLD THE COMPANY, ITS THIRD PARTY SERVICE PROVIDERS AND THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY CLAIM, DEMAND, LOSS, COSTS OR EXPENSE (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO YOUR ACCESS OR USE OF THE SERVICE OR THE SITE; INCLUDING, BUT NOT LIMITED TO, YOUR VIOLATION OF THIS AGREEMENT, STATE OR FEDERAL SECURITIES OR OTHERS LAWS OR REGULATIONS, OR ANY OTHER PERSON'S RIGHTS, INCLUDING, BUT NOT LIMITED TO, INFRINGEMENT OF ANY COPYRIGHT OR VIOLATION OF ANY INTELLECTUAL PROPERTY, PROPRIETARY OR PRIVACY RIGHT. IF YOU ARE OBLIGATED TO INDEMNIFY POSITIVLY OR ANY OF THE INDEMNIFIED PARTIES IDENTIFIED ABOVE, POSITIVLY (OR, AT POSITIVLY'S DISCRETION, THE APPLICABLE INDEMNIFIED PARTY) WILL HAVE THE RIGHT, IN ITS SOLE DISCRETION, TO CONTROL ANY ACTION OR PROCEEDING AND TO DETERMINE WHETHER POSITIVLY WISHES TO SETTLE, AND IF SO, ON WHAT TERMS.

IN NO EVENT SHALL ANY DISCLAIMING PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, INCOME, GOODWILL, BUSINESS, USE, DATA OR ANY INFORMATION (INCLUDING YOUR PERSONAL DATA, ACCOUNT INFORMATION OR DOCUMENTATION), OR OTHER INTANGIBLE LOSSES, OR DAMAGES CAUSED BY THEFT, UNAUTHORIZED ACCESS, SYSTEMS FAILURE, OR COMMUNICATIONS LINE FAILURE, OR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, CAUSED BY THE USE OF OR INABILITY TO USE THE SERVICE, THE SITE, MATERIALS OR ANY PRODUCTS PROVIDED HEREIN, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED. TO THE EXTENT THAT A JURISDICTION DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN, THE LIABILITY OF THE DISCLAIMING PARTIES IS LIMITED TO THE EXTENT PERMITTED BY LAW IN SUCH JURISDICTIONS. YOUR

SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT SHALL BE FOR YOU TO DISCONTINUE YOUR USE OF THE SERVICE AND THE SITE.

If you are a California resident, you waive California Civil Code Section 1542, which states:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTIVE THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY HIS OR HER SETTLEMENT WITH THE DEBTOR."

If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

#### **17. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL POSITIVLY, ITS LICENSORS, SUPPLIERS, AFFILIATES AND SERVICE PROVIDERS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION ARISING OUT OF OR RELATED TO THE TERMS, YOUR USE OR ATTEMPTED USE OF POSITIVLY.COM, ANY OF THE SERVICES (AS DEFINED ABOVE), OR ANY OF THE OTHER INFORMATION, SERVICES OR TRANSACTIONS CONTEMPLATED BY THESE TERMS, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE FEES PAID BY YOU TO THE COMPANY IN CONNECTION WITH THE SERVICES IN THE SIX (6) MONTH PERIOD PRECEDING THE APPLICABLE CLAIM. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

#### **18. MODIFICATIONS, SUSPENSION AND TERMINATIONS OF THE SERVICE**

The Company and its Third Party Service Providers reserve the right to modify or discontinue, temporarily or permanently, the Site or the Service (or any part thereof) with or without notice. You agree that neither the Company nor its Third Party Service Providers will be liable to you or to any third party for any modification, suspension or discontinuance of the Service or the Site. The license granted hereunder will terminate if we or our Third Party Service Providers believe that any information provided by you, including your e-mail address, is no longer current or accurate, or if you fail to otherwise comply with any term or condition of this Agreement or any other guideline, terms and conditions, or policies relating to the Service or the Site. Upon such violation, you agree to terminate access to the Service.

Furthermore, the Company or its Third Party Service Providers may, in their sole discretion, suspend your access to and use of the Service or reject or remove from the Service any of your Data, Account Information or any other information provided by you to (a) prevent damages to, or degradation of, the Service or the Site; (b) comply with any law, regulation, court order, or other governmental request; or (c) otherwise protect us or our Third Party Service Providers from potential legal liability.

You may close your Account or cease using the Services at any time. To close your Account, you must contact us at [hello@positivly.com](mailto:hello@positivly.com). Account termination may result in destruction of any Content or User Information associated with your Account.

#### **19. NOTICES, COMMUNICATIONS, AND ELECTRONIC SIGNATURES**

You agree to accept all communications from us regarding use of the Service at the addresses you provide during Registration. It is your responsibility to provide the Company with your accurate email address, your contract information and/or mobile phone number, and to update such information with the Company. Please promptly update any changes to your Account Information. The Company and its Third Party Service Providers are entitled to rely on the e-mail address, mobile phone number and U.S. mail address that you last provided, for purposes of communication and providing information relating to the Company or its Third Party Service Providers' products and services.

If the Company sends you an electronic communication but you do not receive it because your contact information on file is incorrect, or you are otherwise unable to receive electronic communications, the Company will be deemed to have provided the communication to you. All communications from the Company in electronic format will be deemed to be "in writing," and to have been received within twenty-four (24) hours after posting or dissemination. You agree to waive all claims resulting from failure to receive communications because of changes in your e-mail, mobile phone number or U.S. mail address. You can opt out of receiving marketing information from us or our Third Party Service Providers by following the instructions in any e-mail sent to you by such party.

You agree to be bound by any affirmation, assent, or agreement you transmit through the Service, including but not limited to, any consent you give to receive communications from us or our Third Party Service Providers solely through electronic transmission. You agree that, when in the future you click on an "I agree," "I consent" or other similarly worded "button" or entry field with your mouse, keystroke or other device, or sign your name electronically on a touchscreen device, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature.

You may decline or withdraw consent to receive communications electronically from the Company, but you agree and acknowledge that the Company may suspend or terminate your use of the Services if you do not consent to receive communications in electronic format.

## 20. GENERAL PROVISIONS

### a. Relationship of the Parties

Positivly is an independent contractor for all purposes. Nothing in these Terms shall be deemed to create or constitute, imply, give effect to or otherwise recognize a partnership, employment, joint venture, or formal business relationship of any kind. Under specifically authorized, Positivly is not your broker, intermediary, agent or advisor, and has no fiduciary relationship, duty or obligation to you or any other user in connection with your use of the Services. Neither Positivly nor its licensors or Third Party Service Providers are providing tax advice, legal advice, or other professional advice by allowing you to use the Services.

### b. No Publicity

Nothing in this Agreement gives either party a right to use publicly the other party's name, trademark(s), trade name(s) or refer to the existence or terms of this Agreement directly or indirectly without the other party's prior written consent. The parties acknowledge and agree that prior consents given by either party prior to the Effective Date are and will remain valid.

### c. Export

Both parties acknowledge and agree that the Software and technology subject to this Agreement are subject to the export and re-export control laws and regulations of the United States and any applicable jurisdiction, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. Both parties will comply with these laws and regulations. Both parties shall not, without prior U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury.

### d. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without reference to its choice of law rules. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in a federal court in the Southern District of New York or in state court in the County of New York, New York, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. If any part of this Agreement is held to be invalid, void or unenforceable,

that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions hereof.

**e. Entire Agreement**

This Agreement shall inure to the benefit of each party's successors and permitted assigns. This Agreement, together with all forms and exhibits and the Privacy and Cookies Policies constitutes the entire agreement between the parties and supersedes all prior or contemporaneous written and oral agreements and understandings between the parties relating to the subject matter hereof.

**f. Survival**

All provisions of these Terms which by their nature extend beyond the expiration or termination of these Terms shall survive termination of your Account. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

**g. No Waiver**

The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder.

**h. Assignment**

You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Account, in any way (by operation of law or otherwise) without the Company's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent, including as part of a change of control or other corporate combination or transaction.

You acknowledge and agree that any of the Company's officers, directors, employees and independent contractors ("Personnel") are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third party beneficiary hereof.

**i. Headings**

The section headings in these Terms are for convenience only and shall not govern the meaning or interpretation of any provision of these Terms.

**j. Severability**

If any provision of these Terms shall be determined to be unenforceable or invalid under any rule, law or regulation of any local, state or federal government, such provision will be limited, changed or eliminated only to the minimum extent necessary to accomplish the objectives of the provision

to the greatest extent possible under applicable law and these Terms shall otherwise remain valid, in full force, and enforceable.

**k. Force Majeure**

The Company shall not be liable for delays, failure in performance or interruption of any of the Services which result directly or indirectly from any abnormal or unforeseeable circumstance, cause or condition beyond our reasonable control, including but not limited to, significant market volatility, any delay or failure due to any act of God, act of civil or military authorities, act of terrorists, civil disturbance, war, pandemic, strike or other labor dispute, fire, interruption in telecommunications or Internet services or network provider services, failure of equipment and/or software, other catastrophe or any other occurrence which is beyond our reasonable control and shall not affect the validity and enforceability of any remaining provisions.

**l. CONTACT**

For more information about Positivly or any of the Services, please visit our website. If you have any questions, comments, or concerns regarding these Terms or the Services, please contact our Customer Support team at [hello@positivly.com](mailto:hello@positivly.com).