

Terms and Conditions

TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

The Customer's attention is particularly drawn to the provisions of clause 9.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Terms.

Business Hours: between 9.00am and 5.00pm on any day which is not a Saturday, Sunday or public holiday in England but excluding the days between Christmas Day and New Year's Day (inclusive).

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.1.

Customer Data: the data inputted by the Customer, or Intellegentia on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Deliverables: any documents, products and materials developed by Intellegentia in relation to the Services in any form, including without limitation computer programs, websites, data, images (including stock images), video, audio, designs, styles, concepts, reports and specifications (in all cases including drafts).

Effective Date: the date defined in clause 2.

Intellegentia: means Intellegentia Limited (Reg. No. 4843647) whose registered office is at 15 The Courtyard Timothy's Bridge Road, Stratford Upon Avon Warwickshire CV37 9NP.

Intellectual Property Rights: all patents, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world

Services: Services: the services requested by the Customer as described in the applicable Service Agreement. Should any variations to the service agreement occur, this will be confirmed in writing by both signatories of this document.

Service Agreement: the Service Agreement made available to the Customer by Intellegentia setting out the description of the Services.

Service Fees: the fees payable by the Customer to Intellegentia in relation to the Services as set out in the Service Agreement or as may be notified to the Customer from time to time.

Software: the online software applications used and / or recommended by Intellegentia as part of the Services.

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. BINDING CONTRACT

2.1 An order for Services by the Customer shall only be deemed to be accepted when Customer signs the Service Agreement at which point and which date the contract between the Customer and Intellegentia shall come into existence (Effective Date)

2.2 The contract consisting of these Terms and the Service Agreement (the Contract) constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Intellegentia which is not set out in the Contract.

2.3 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Subject to clause 3.1 below, no variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties

3. INTELLEGENZIA'S OBLIGATIONS

3.1 Intellegentia undertakes that the Services will be performed in all material respects substantially in accordance with the Service Agreement and with reasonable skill and care on a non-exclusive basis.

3.2 The undertaking at clause 3.1 shall not apply to the extent of any non-conformance which is caused by use of the Services or the Software contrary to Intellegentia's instructions, or modification or alteration of the Services or the Deliverables by any party other than Intellegentia or Intellegentia's duly authorised contractors or agents.

3.3 If the Services or the Deliverables do not conform with the foregoing undertaking, Intellegentia will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 3.1. Notwithstanding the foregoing, Intellegentia:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, and / or information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3.4 Intellegentia may, from time to time and without notice, change the Services in order to comply with any applicable statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

3.5 In the event that the Customer requests a change to, rejects, cancels or stops the Service or any part of the Service then Intellegentia shall take reasonable steps to comply with such instruction subject to Intellegentia's liabilities to third parties. In addition to this, should the Customer request any of the previously mentioned, they will be liable to pay the next stage payment in full only.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall use reasonable endeavours to:

(a) provide Intellegentia with:

- (i) all necessary co-operation in relation to these Terms;
- (ii) timely responses to approval requests (if applicable);
- (iii) all necessary access to such information as may be required by Intellegentia; and
- (iv) material that is not false or misleading in relation to the Customer's goods and/or services,

in order to provide the Services;

(b) carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Intellegentia may adjust any agreed timetable or delivery schedule as reasonably necessary;

(c) comply with all applicable laws and regulations with respect to its activities under these Terms including (but not limited to) the provisions of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended by Privacy and Electronic Communications (EC Directive) (Amendments) Regulations 2011); and

(d) obtain and shall maintain all necessary licences, consents, and permissions necessary for Intellegentia, its contractors and agents to perform their obligations under these Terms, including without limitation obtaining consents relating to the processing of Customer Data and licenses to for the use of any materials supplied by the Customer to Intellegentia for the purposes of the Services (including without limitation copy, images, audio and/or video).

5. CHARGES AND PAYMENT

5.1 Intellegentia shall invoice the Customer for the Services Fees and the Customer shall pay the Service Fees in accordance with this clause 5 on the due date specified on the relevant invoice.

5.2 All amounts and fees stated or referred to in these Terms:

- (a) are non-cancellable and non-refundable;
- (b) are exclusive of value added tax, which shall be added to Intellegentia's invoice(s) at the appropriate rate;
- (c) shall be payable in cleared funds in pounds sterling.

5.3 Any fees for additional services provided to the Customer or variations to Services requested by the Customer together with any additional third party costs incurred by Intellegentia as a result of such additions or variations shall be invoiced to the Customer and the Customer shall pay each invoice on the due date specified in such invoice(s).

5.4 If Intellegentia has not received payment of an invoice on the relevant due date then Intellegentia will communicate this in writing to the Customer and give a 10 working day notice of their intention. If the Customer does not amend this, Intellegentia may:

(a) Terminate or suspend the provision of Services; and

(b) Apply a 2% interest charge on a daily basis commencing on the due date and continued to the date paid.

5.5 Intellegentia shall be under no obligation to provide any or all of the Services while any overdue invoice(s) together with any accrued interest thereon remain unpaid.

5.6 In the event of the suspension or termination of the Contract (for whatever reason) then all Service Fees or other sums payable under this Contract or costs otherwise incurred by Intellegentia on behalf of the Customer in performance of the Services (whether or not invoiced to the Customer) shall become due and payable immediately.

6. CUSTOMER DATA AND DATA PROTECTION

The Customer shall own all right, title and interest in and to all of the Customer Data and shall have responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 If Intellegentia processes any personal data on the Customer's behalf when performing its obligations under these Terms, the parties agree that the Customer is a Controller and that Intellegentia is a Processor for the purposes of the relevant Data Protection Laws.

6.3 The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Personal Data. The Customer shall ensure all instructions given by it to Intellegentia in respect of Personal Data at all times be in accordance with Data Protection Laws.

6.4 Intellegentia shall process Personal Data in compliance with the obligations placed on it under Data Protection Laws, these Terms and Intellegentia's Privacy Policy as amended from time to time (a copy of which is available at <https://www.intellegentia.co.uk/privacy-policy>) (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

6.5 If Intellegentia believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and

be entitled to cease to provide the relevant Service until the parties have agreed appropriate amended instructions which are not infringing.

6.6 The Customer shall indemnify and keep indemnified Intellegentia against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 6.

6.7 In these Terms, 'Data Protection Laws' means:

- (a) the General Data Protection Regulation (GDPR) (EU) 2016/679;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

7. PROPRIETARY RIGHTS

7.1 The Customer acknowledges and agrees that Intellegentia and/or its licensors own all Intellectual Property Rights in the Services, the Service Agreement, and any pitches, presentations or proposals made to the Customer (in all cases whether created before or after the Effective Date) and except as expressly stated herein, these Terms do not grant the Customer any Intellectual Property Rights in the same.

7.2 Subject to clause 7.4 below together with the payment of the Service Fees, Intellegentia licenses the Intellectual Property Rights in any Services and Deliverables to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services and Deliverables in accordance with these Terms. If this Contract is terminated, the customer will retain this license on a non-exclusive basis and right of use in perpetuity.

7.3 Notwithstanding any of the above, Intellegentia shall be entitled (without further consent from the Customer):

- (a) to use and exploit any general know-how, expertise and experience gained in providing the Services to the Customer with any other third party provided this does not include any competing businesses of the Customer; and
- (b) to use the Deliverables for the purposes of promoting the business of Intellegentia including without limitation the upload of the Deliverables to

Intellegentia's public website or submission of the Deliverables to industry awards.

7.4 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services or the Deliverables, the Customer's use of any such Intellectual Property Rights is conditional on Intellegentia obtaining (at the Customer's expense) a licence from the relevant licensor on such terms as will entitle Intellegentia to license such rights to the Customer.

8. CONFIDENTIALITY

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.

8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.

8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5 This clause 8 shall survive termination of these Terms, up to a five-year period from the date of termination.

9. INDEMNITY

9.1 The Customer shall defend, indemnify and hold harmless Intellegentia against claims, fines, penalties, actions, proceedings, losses, damages, expenses and costs

(including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services or any failure by the Customer to comply with its obligations under the Contract, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Intellegentia provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

This is subject to written approval from the customer for materials produced and services offered.

9.2 In no event shall Intellegentia, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services by anyone other than Intellegentia; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Intellegentia; or
- (c) any information, data or materials provided to Intellegentia by the Customer as part of the Services.

9.3 The foregoing and clause 10.4(b) states the Parties' sole and exclusive rights and remedies, and Intellegentia's (including Intellegentia's employees, agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

10. LIMITATION OF LIABILITY

10.1 This clause 10 sets out the entire financial liability of the Parties (including any liability for the acts or omissions of its employees, agents and sub-contractors):

- (a) arising under or in connection with these Terms;
- (b) in respect of any use made by the Customer of the Services; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.

10.2 Except as expressly and specifically provided in these Terms:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Intellegentia shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Intellegentia

by the Customer in connection with the Services, or any actions taken by Intellegentia at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and

(c) the Services are provided to the Customer on an "as is" basis.

10.3 Nothing in these Terms excludes the liability of the Parties:

(a) for death or personal injury caused by Intellegentia's negligence; or

(b) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and clause 10.3:

(a) Parties shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and

(b) Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Service Fees paid during the 12 months immediately preceding the date on which the claim arose.

11. TERMINATION

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms without liability to the other if:

(a) the other party commits a material breach of any of the terms of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) if an order for bankruptcy of a party or an effective resolution is passed for the winding-up of the other party or the other party makes a composition with creditors or if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over the whole of any part of the assets of the other party; or

(c) the other party ceases, or threatens to cease, to trade; or

(d) the other party is declared insolvent.

11.2 On termination of these Terms for any reason:

(a) all licences granted under these Terms shall immediately terminate unless the Customer has paid for this Service or Deliverable. Once this payment has been paid then they will be available in line with Clause 5.6 and granted in perpetuity.

(b) each party shall return and make no further use of any equipment, property, Software, other items (and all copies of them) belonging to the other party;

(c) Intellegentia may destroy or otherwise dispose of any of the Customer Data in its possession unless Intellegentia receives, no later than ten days after the effective date of the termination of these Terms, a written request for the delivery to the Customer of a copy of Customer Data. Intellegentia shall use reasonable commercial endeavours to deliver the data to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Intellegentia in returning or disposing of Customer Data; and

(d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

12. FORCE MAJEUR

(a) If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the “Nonperforming Party”) will be excused from performing those obligations.

(b) For purposes of this agreement, “Force Majeure Event” means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this agreement (other than an obligation to pay money), on condition that that party that uses reasonable efforts to do so, except that a Force Majeure Event will not include any a strike or other labor unrest that affects only one party, an increase in prices, or a change of law.

(c) Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use

reasonable efforts to limit damages to the Performing Party and to resume its performance under this agreement.

13. GENERAL

13.1 A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

13.2 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

13.3 These Terms, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

13.4 Both Parties shall not, without prior consent of the other Party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms. Intellegentia may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

13.5 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.

14. NOTICES

14.1 Any notice required to be given under these Terms shall be in writing (which shall include email) and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Terms, or such other address or email address as may have been notified by that party for such purposes as set out in these Terms.

14.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not between 9.00 am to 5.00 pm local UK time, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received 24 hours after a correctly addressed email is sent (as shown by the timed printout obtained by the sender).

15. GOVERNING LAW AND JURISDICTION

The Contract, 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), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Intellegentia[®] 15, The Courtyard, Timothy's Bridge Road. Stratford Upon Avon CV37 9NP

tel: 01789 262656 | **email:** information@intellegentia.co.uk | **web:** www.intellegentia.co.uk