



## Terms and Conditions

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### TERMS OF BUSINESS OF INTELOGY LIMITED ("Ts and Cs")

#### 1. Definitions The following words and expressions have the following meanings:

'**Acceptance Date**' the date on which an Application or Application is accepted, in accordance with the Proposal;

'**Acceptance Tests**' any acceptance tests for an Application as contained in the Proposal;

'**Application**' a software application to be developed by Intelogy in accordance with the Proposal;

'**Completion Date**' the date on which successful completion is planned to occur, as set out in the Proposal;

'**Confidential Information**' all business, technical, financial or other information created or exchanged between the parties;

'**Content**' all text, graphics, logos, photos, images, sound, illustrations and other material featured, displayed or used in a Application;

'**Customer Content**' the Customer's Software (including all enhancements and corrections);

'**Deposit**' any initial payment to Intelogy Ltd, as stated in the Proposal;

'**Documentation**' the user manuals, technical documentation and training manuals for an Application or Application;

'**Effective Date**' means the date stated in the Proposal;

'**IPR**' all patents, trademarks, domain names, designs, copyrights and database rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) and all other IPR of a similar or corresponding character which may subsist now or in the future in any part of the world;

'**New Software**' all the Software (including all enhancements and corrections) other than Intelogy Software, the Customer Content and the Third Party Software;

'**Order Acknowledgement**' the written order acknowledgement from Intelogy to the Customer;

'**Price**' the sum to be paid by the Customer to Intelogy for the Services;

'**Proposal**' the Proposal or Statement of Work document from Intelogy to the Customer for the provision of the Services;

'**Services**' the services to be provided by Intelogy to the Customer as stated in the Proposal which may include application development, software programming, web development, hosting, training of staff, consultancy services, on-going maintenance and illustrative design work;

'**Software**' all data, technical specifications, logic, logic diagrams, flow charts, templates, orthographic representations, algorithms, modules, sub-routines, file structures, coding sheets, coding, source or object codes, listings, test data, test routines, diagnostic programs or other material relating to or comprising part of an Application or Application;

'**Intelogy Software**' Intelogy's proprietary Software (including all enhancements and corrections);

'**Term**' the term as agreed in the Proposal as amended by the Order Acknowledgement save where terminated in accordance with these Ts and Cs.

'**Third Party Software**' third party Software (including all enhancements and corrections);

'**Website**' a web based solution to be developed by Intelogy in accordance with the Proposal; and

'**Working Day**' 9.00 am to 5 pm Monday to Friday excluding bank holidays.

In the event of any conflict between the Proposal and these Ts and Cs, the Proposal shall take precedence.

#### 2 Intelogy's duties

- 2.1 Subject to these Ts and Cs and receiving payment of the Price from the Customer, Intelogy shall from the Effective Date provide the Services to the Customer.
- 2.2 Intelogy hereby grants to the Customer under these Ts and Cs a royalty free, non-exclusive licence to use the Software supplied hereunder for the purpose only for the duration of the Term.

#### 3 Services management

- 3.1 Both parties undertake to use reasonable endeavours to ensure that the Services proceed on the terms set out in the Proposal as amended by the Order Acknowledgement.
- 3.2 Whilst the Services are being provided, the Customer and Intelogy shall give each other's staff such access to their respective premises as the other may reasonably require to comply with these Ts and Cs.
- 3.3 Intelogy shall use reasonable endeavours to meet any performance dates specified in the Proposal, or other dates defined in a mutually agreed and maintained project plan.

#### 4 Customer's duties

- 4.1 The Customer shall deliver the Customer Content to Intelogy, where relevant, in the agreed format and the Customer shall ensure it is correct and shall update the Customer Content when required.
- 4.2 In the event of a cancellation or postponement of a confirmed engagement with Intelogy, the Customer shall notify Intelogy in writing at least two Working Days before the scheduled start time. Intelogy reserves the right to charge full professional service fees for a cancellation less than two Working Days in advance. Any costs incurred because of a cancellation by the Customer of a confirmed engagement will be charged to the Customer irrespective of notice given.

#### 5 Variations

- 5.1 The Customer may request variations to the Services by giving written notice to Intelogy. On receipt of a request, according to the terms of a mutually agreed change control process, Intelogy shall notify the Customer of the terms upon which Intelogy will perform the variation, including the effect on the Price. The Customer shall confirm whether it wishes the variation to proceed.

#### 6 Testing and acceptance of an Application

- 6.1 Following delivery and installation of an Application or Website, but prior to go-live, the Customer shall carry out the Acceptance Tests. If the Customer considers that the Application or Website has materially failed to pass the Acceptance Tests, they shall promptly give written notice of the failure to Intelogy, specifying their reasons.
- 6.2 On receipt of the notice Intelogy shall determine the causes of the failure, advise the Customer of them and make any changes to the Application or Application (including corrections or enhancements to the Software) reasonably necessary to ensure that the Application or Application will pass the Acceptance Tests. If, on investigation, this failure proves to be as a result of action by the Customer, Intelogy shall be entitled to charge for the costs of the investigation and making the necessary changes at Intelogy's then current price list.

#### 7 Price and payment

- 7.1 The Customer shall pay Intelogy in accordance with the payment schedule defined in the Proposal.
- 7.2 The Price is inclusive of all labour and materials but VAT and expenses shall be charged in accordance with the Proposal.
- 7.3 In the event that Third-Party Software is used in the development or maintenance of an Application or Application, the initial cost of obtaining the necessary licences shall be included in the Price but any on-going costs of such licences shall be borne exclusively by the Customer.
- 7.4 All payments to Intelogy shall be made within 30 days after receipt of Intelogy's invoices.
- 7.5 Time for payment under condition 7.4 shall be of the essence.
- 7.6 Intelogy shall have the right to raise interim invoices during the provision of the Services.
- 7.7 Intelogy shall be entitled to recover from the Customer its reasonable incidental expenses for materials used during the Services and for third party goods and services.
- 7.8 Unless specified in the Proposal, all annual subscriptions payable by the Customer shall be payable in advance.
- 7.9 Without prejudice to any other rights that Intelogy may have Intelogy shall have the right to suspend the Services under these Ts and Cs on 7 days' written notice in the event of any payment due under these Ts and Cs not being received by Intelogy within the 30 days specified in condition 7.4.

7.10 If the Customer fails to pay Intelogy any sum due under to these Ts and Cs, the Customer shall be liable to pay interest to Intelogy on such sums from the due date for payment at the rate of 2% above the base rate from time to time of Bank of Scotland Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

7.11 In the event of termination of these Ts and Cs Intelogy shall have the right to recover all costs and expenses due to Intelogy under these Ts and Cs.

## 8 Warranty

8.1 Intelogy confirms to the Customer that the Services will be provided in a timely and orderly fashion by skilled and experienced personnel acting with due care and skill and in accordance with industry practice.

8.2 Intelogy makes no warranty in relation to the accessibility of an Application or Website in the event the Customer modifies the Application or Website save as specifically agreed in the Proposal or as amended in the Order Acknowledgement.

8.3 Provided that the customer has not altered the configuration or code of the solution beyond the instructions provided in the Documentation, Intelogy will provide services to repair or fix any defective software free of charge for up to 90 days after UAT acceptance or go-live, whichever is sooner.

8.4 Intelogy makes no warranty in relation to the availability of an Application or Website in the event the underlying hosting platform is modified by a third party without due notification.

## 9 Intellectual property

9.1 Intelogy shall indemnify, and keep indemnified, the Customer up to the value specified in 12.2 against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

9.2 The right, title and interest (including all IPR) in New Software, templates, documentation and the Content ("the Potentially Transferable Rights") shall be retained by the Customer. In the event that the Proposal makes no specific provision for assignment of IPR to the Intelogy, the right, title and interest in the Potentially Transferable Rights shall be retained by Customer.

## 10 Data Protection Indemnity

Where Intelogy collects and processes personal information from the Customer, it will do so within the requirements of the GDPR. We will protect the information and will not pass it on to any other parties unless we have permission or we are legally required to do so. We will store and process personal information securely either on our own premises, or through the use of service providers and / or data storage services, both within and outside of the EU, which are also compliant with the requirements of the GDPR. All personal information is retained, corrected, erased and/or disposed of in compliance with all applicable laws. Where Intelogy is the Data Controller or the Data Processor, we shall indemnify the Customer against any loss of data for which the Customer is the Data Controller.

## 11 Confidentiality

11.1 During the provision of the Services and after termination or expiration of these Ts and Cs for any reason for a period of 12 months starting on Completion Date, the following obligations shall apply to the party disclosing confidential information ('Disclosing Party') to the other party ('Receiving Party').

11.2 Subject to condition 11.3, the Receiving Party:

11.2.1 may not use any confidential information for any purpose other than the performance of his obligations under these Ts and Cs;

11.2.2 may not disclose any confidential information to any person except with the prior written consent of the Disclosing Party; and

11.2.3 shall make every effort to prevent the use or disclosure of the confidential information.

11.3 The obligations of confidence referred to in the provisions of this condition shall not apply to any confidential information that:

11.3.1 is in the possession of the Receiving Party or is otherwise in the public domain prior to its receipt by the Receiving Party;

11.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

11.3.3 is required to be disclosed by any applicable law or regulation.

11.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party agrees that in the event of breach of this condition the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this condition in addition to any other remedies to which he may be entitled.

11.5 The obligations of the parties under this condition shall survive the expiry or the termination of these Ts and Cs for whatever reason.

## 12 Liability

12.1 Notwithstanding any other provision in these Ts and Cs, Intelogy's liability to the Customer for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.

12.2 Intelogy's entire liability to the Customer in respect of any breach of his contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with these Ts and Cs shall be limited to Intelogy's professional indemnity insurance limit (£2M).

12.3 Intelogy shall not be liable to the Customer for any indirect or consequential loss the Customer may suffer even if the loss is reasonably foreseeable or Intelogy was advised of the possibility of the Customer incurring it.

12.4 For the avoidance of doubt Intelogy shall have no liability to the Customer where the Customer suffers data loss including, without limitation, loss of data arising from Customer deletion, coding errors, or external interception or hacking.

## 13 Termination

13.1 A party ('Initiating Party') may terminate these Ts and Cs immediately by written notice to the other party ('Breaching Party') at any time after the occurrence of an event specified in condition 13.2.

13.2 The events are:

13.2.1 the Breaching Party committing a material breach of these Ts and Cs and failing to remedy the breach within 30 days of notice from the Initiating Party detailing the breach;

13.2.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within 7 days (other than, in each case, for the purposes of solvent amalgamation or reconstruction in such a manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under these Ts and Cs);

13.2.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over or an encumbrancer taking possession of or selling an asset of the Breaching Party; or

13.2.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.

13.3 An act or omission by a person who controls, is under common control with, or is controlled by a party that would be a breach of these Ts and Cs on his part if it were an act or omission of the party shall be deemed to be a breach of these Ts and Cs by the party.

13.4 Termination of these Ts and Cs for whatever reason shall not affect either:

13.4.1 the accrued rights and liabilities of the parties arising in any way out of these Ts and Cs at the date of termination including without limitation the right to recover damages against the other; or

13.4.2 provisions that are expressed to survive these Ts and Cs, which shall remain in full force and effect.

13.5 In the event of termination of these Ts and Cs the customer shall be liable for all costs and expenses actually incurred by Intelogy up to and including the date of termination.

## 14 Non-solicitation of staff

Both parties agree that during the term of these Ts and Cs and for 12 months after termination, they will not directly or indirectly canvass with a view to offering or providing employment to, offer to contract

with or entice to leave any employee or contractor of the other party without the prior written consent of the employee's or contractor's employer.

#### **15 Force majeure**

- 15.1 Neither party shall be deemed to be in breach of these Ts and Cs or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under these Ts and Cs (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance beyond the reasonable control of that party ('an event of force majeure').
- 15.2 The party relying on the condition 15.1 shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure.
- 15.3 If the event of force majeure prevails for a continuous period of 3 months after the date on which it began, the other party may give notice to the party terminating these Ts and Cs.

#### **16 Invalidity**

- 16.1 If any provision of these Ts and Cs is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction:
- 16.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
  - 16.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision, shall not be affected or impaired in any way.
- 16.2 If any provision of these Ts and Cs is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from these Ts and Cs and the validity of the remaining provisions shall not be affected.

#### **17 General**

- 17.1 The parties agree that they will enter into any further documents that may be required to give effect to the terms of these Ts and Cs.
- 17.2 Notices under these Ts and Cs shall be in writing, sent to the person, and to the address or fax number, given in the Proposal (or such other address, fax number or person as the relevant Party may notify to the other Party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 17 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 17.3 The parties agree that these Ts and Cs are subject to the laws of England and Wales, and also to the exclusive jurisdiction of the Courts of England and Wales.
- 17.4 The parties agree that all the terms of these Ts and Cs are contained within these Ts and Cs, and that no third party shall have any rights under it pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.5 Nothing in these Ts and Cs is intended to, or shall operate to, create a partnership between the Parties, or to authorise either party to act as agent for the other.
- 17.6 Each of the parties acknowledges and agrees that, in entering into these Ts and Cs it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of these Ts and Cs, other than as expressly set out in these Ts and Cs.
- 17.7 The rights and remedies provided for by these Ts and Cs are cumulative with any rights or remedies provided by law.
- 17.8 No party shall, without the prior written consent of the other parties, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Ts and Cs.
- 17.9 These Ts and Cs shall apply to the contract between the Customer and Intelogy to the exclusion of any terms and conditions put forward by the Customer.

Accepted for and on behalf of Intelogy

**Name:** Andrew Tomlins

**Role:** Commercial Director

**Date:**

**Signed:**

Accepted for and on behalf of client

**Name:**

**Role:**

**Date:**

**Signed:**