

TERMS AND CONDITIONS

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LORNA HURST

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**Intelligens
Consulting**

Telecoms and Smart Cities

**TELECOMS, DIGITAL TRANSFORMATION AND SMART CITY MANAGEMENT
CONSULTANT TO INVESTORS, OPERATORS AND PUBLIC AUTHORITIES**

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INTELLIGENS CONSULTING TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 In these Terms the following words shall have the following meanings:
- 1.1.1 **“Company”**: Intelligens Consulting Ltd with company number SC556082
- 1.1.2 **“Confidential Information”**: any information relating to, but not limited to, the business affairs, prospective business, trade secrets, current and future products, services, technology, customers, market opportunities, IP or finances of a party, including without limitation price lists, lists of customers and suppliers which the party regards, or could reasonably be expected to regard, as confidential information;
- 1.1.3 **“Contract”**: the Proposal accepted by the Customer together with these Terms;
- 1.1.4 **“Customer”**: shall mean [CLIENT] with company number [NUMBER]
- 1.1.5 **“IP”**: means rights in inventions (and for the avoidance of doubt the right to apply for, prosecute and obtain patent or similar protection throughout the world in respect of any such inventions), know-how, designs (whether or not capable of registration), copyright (including rights in computer software), any and all other intellectual property rights, all such rights having equivalent or similar effect as the foregoing anywhere in the world;
- 1.1.6 **“Proposal”**: means the proposal for the supply of services by the Company to the Customer attached to these Terms or with which these terms were delivered;
- 1.1.7 **“Services”**: the services agreed in the Proposal to be supplied by the Company to the Customer (including any part or parts of them).

2 AGREEMENT

- 2.1 The Contract will be on these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 Each order for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase Services subject to these Terms.
- 2.4 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company, the Company has received an unqualified written acknowledgement of confirmation on the Company’s standard confirmation form or (if earlier) the Company commences performance of the Services.
- 2.5 Any Proposal is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3 COMPANY’S OBLIGATIONS

- 3.1 The Company will perform the Services with reasonable care, skill and diligence.
- 3.2 The Company warrants that the consultants used or employed to provide the Services will be properly experienced and qualified.
- 3.3 The Company shall employ the methods, procedures, techniques, personnel and sources of information set out in the Proposal but may vary these at its discretion to achieve the objectives of the Proposal.
- 3.4 The Company will take all reasonable steps to ensure that its consultants are able to travel wherever is necessary for the performance of the Services. If, however, the UK Foreign and Commonwealth Office (or equivalent national body) issues advice against travel to a specified country or region the Company reserves the right to make alternative arrangements to perform the Services without travel to that country or region. The Company shall not be in breach of the Contract for so doing. If performance of the Services is rendered wholly or substantially impossible for the reasons set out in this clause 3.4, clause 12 of the Contract shall apply.

4 CUSTOMER’S OBLIGATIONS

- 4.1 The Customer will, at its own expense take all steps including without limitation, providing the facilities, materials, software, equipment, information and other resources to enable the Company to:
- 4.1.1 commence performance of the Services no later than 30 days after acceptance of the Proposal;
- 4.1.2 perform its obligations under the Contract.
- 4.2 The Customer will co-operate in good faith with the Company throughout the provision of the Services including without limitation making personnel available to assist the Company when reasonably requested and procuring that any other contractors engaged by the Customer co-operate with the Company at all relevant times.
- 4.3 During the performance of the Services the Customer will promptly provide all reasonable assistance required by the Company to perform the Services.

5 PAYMENT

- 5.1 In consideration of the provision of the Services, the Customer will pay to the Company the fees set out in the Proposal. Unless otherwise stated in the Proposal, fees shall accrue on a daily basis.

- 5.2 Unless otherwise stated in the Proposal, fees are exclusive of VAT and payable within 30 days of the date of receipt of the invoice.
- 5.3 Unless otherwise stated in the Proposal, the Company will render monthly invoices to the Customer in respect of the fees referred to above.
- 5.4 The Customer will be responsible for all out-of-pocket expenses incurred by the Company in the performance of the Services at the rates detailed in the Proposal. No single expense or series of related expenses totalling £500 or more shall be payable by the Customer unless such have been approved in writing (including email) in advance of being incurred.
- 5.5 NOT USED
- 5.6 All payments shall be made without any deduction or withholding, whether by way of set-off, counterclaim, abatement or otherwise.
- 5.7 Where any expense is paid by the Company in a currency other than Pounds Sterling (GBP) it shall (unless otherwise stated in the Proposal) be reimbursed in GBP calculated at the rate of exchange prevailing at the date when the expenses were incurred by the Company.
- 5.8 If the project is paused by the Customer in accordance with clause 5.9, the Company is entitled to raise an invoice after 30 days for all work carried out up to that point, less the total amount invoiced to date as agreed with the Customer acting reasonably. Where applicable, this invoice will include any outstanding expenses. Payment will be due within 30 days of the date of receipt of this invoice.
- 5.9 The Customer may pause the performance of the Services once during the course of the contract at any time by giving notice to the Company.

6 CONFIDENTIALITY

- 6.1 The Customer agrees not to copy, publish (in whole or in part) or disseminate the Proposal or any report, survey or other documents produced or commissioned by the Company, on behalf of the Customer, in the performance of the Services to any third party without the prior written consent of the Company, such consent not to be unreasonably withheld. Notwithstanding this, the Customer may disclose the same on a need to know basis with its and its affiliates directors and employees and professional advisers where a duty of confidentiality exists.
- 6.2 The Company agrees to maintain secret and confidential all reports, surveys and other documents produced or commissioned by the Company, on behalf of the Customer, in the performance of the Services (“Deliverables”) and it will not show or pass Deliverables to any third party without the prior written consent of the Customer, such consent not to be unreasonably withheld. For the avoidance of doubt the Company shall be free to use any of the Company’s Background IP or Foreground IP contained within Deliverables for any purpose. Notwithstanding this, the Customer may disclose the same on a need to know basis with its and its affiliates directors and employees and professional advisers where a duty of confidentiality exists.

7 INTELLECTUAL PROPERTY

- 7.1 IP and rights to IP owned by either party at the date of the Contract (“Background IP”) shall remain the property of that party.
- 7.2 The Customer grants the Company a royalty free, non-exclusive, non-transferable licence to use the Customer’s Background IP as required to allow the Company to perform the Services only. Customer Background IP cannot be used for any other purpose without the consent of the Customer. The Customer shall be entitled to terminate the Contract (and the licence granted in clause 7.2 shall terminate concurrently) in the event that the Company uses Foreground IP or the Customer’s Background IP for any purpose other than set out in the Proposal.
- 7.3 IP created or developed by the Company in the course of providing the Services (“Foreground IP”) will be owned by the Company.
- 7.4 Upon completion of the Services and on receipt of payment in full by the Customer, the Company will grant the Customer a non-exclusive, royalty free, non-transferable licence to use any Foreground IP and the Company’s Background IP as required to allow the Customer to use the deliverables produced by the Company for the purposes set out in the Proposal.
- 7.5 The Company shall be entitled to terminate the Contract (and the licence granted in clause 7.4 shall terminate concurrently) in the event that the Customer uses Foreground IP or the Company’s Background IP for any purpose other than set out in the Proposal.

8 LIMITATION AND EXCLUSIONS

- 8.1 Nothing in these Terms shall exclude or in any way limit the Company’s liability for fraud or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 8.2 Subject to clause 8.1
- 8.2.1 the Company shall not be liable for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known;
- 8.2.2 the Company’s maximum aggregate liability to the Customer under or in connection with the Contract whether such claim arises in contract or in tort (including negligence), or otherwise shall in no circumstances exceed three times the amount payable to the Company as set out in the Proposal;
- 8.2.3 the Company shall not be liable for any delay or failure to perform its obligations under the Contract as a result of inaccurate or incomplete information provided by the Customer.
- 8.3 These Terms state the full extent of the Company’s obligations and liabilities in respect of the performance of the Services. The parties agree that any condition, warranty, representation or other term concerning the performance of the Services which

might otherwise be implied into or incorporated in this Contract, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

- 8.4 No action, regardless of form, arising out of transactions occurring under, or contemplated under, the Contract may be brought by either party more than six years after the cessation of Services pursuant to the Contract.

9 TERMINATION

- 9.1 Either party may terminate the Contract at any time on giving 30 days written notice to the other party.
- 9.2 Either party may terminate the Contract immediately by giving written notice to the other party if that other party commits a material breach of the Contract and has failed to remedy that breach within 10 days of receiving written notice of such breach.
- 9.3 Either party may terminate the Contract immediately by written notice in the event that the other party becomes insolvent or commits an act of bankruptcy, or enters into any arrangement with its creditors or goes, or is put into liquidation (other than solely for purposes of reconstruction whilst solvent), or if a receiver is appointed over any part of its business.
- 9.4 Upon termination of the Contract in accordance with clause 9.1 all sums owing to the Company in respect of Services carried out to the date of termination shall become payable in accordance with these Terms, and an accompanying invoice will be raised with immediate effect.
- 9.5 If the Company terminates the Contract in accordance with clauses 7.5, 9.2 or 9.3, the Customer shall pay within 30 days of receipt of an invoice, all fees and expenses then owing to the Company.
- 9.6 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 9.7 Clauses 6, 7, 8, 9, 10, 12 and 13 shall survive termination of the Contract.

10 NOT USED

11 ASSIGNMENT AND SUBCONTRACTING

- 11.1 The Customer shall not assign or transfer its rights under this Contract without the prior written agreement of the Company.
- 11.2 The Company may sub-contract any the Services under the Contract. The Company will endeavour to use sub-contractors detailed in the Proposal or reasonably requested by the Customer, however, the selection of sub-contractors shall be at the Company's sole discretion. The Company remains responsible for delivery of the Services regardless of any subcontracting.

12 FORCE MAJEURE

- 12.1 The Company shall not be liable for any delay or failure in performing its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, provided it has given written notice of such delay to the Customer.
- 12.2 Where possible in the conditions prevailing at the time, within a period of one month from the date of such notice the Company and Customer shall meet to agree steps to alleviate any failure or delay in performance.
- 12.3 After one month from the date of such notice the Company may terminate the Contract and the Customer shall pay all fees and expenses then owing to the Company. The Company shall deliver to the Customer all materials produced to date in relation to the Services.

13 GENERAL

- 13.1 The parties do not intend that this Contract should confer any right or benefit on any third party.
- 13.2 Any delay by the Company in exercising any of its rights under this Contract will not constitute a waiver of such rights.
- 13.3 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this clause 13.3 shall not affect the validity and enforceability of the rest of this Contract.
- 13.4 The Services supplied to the Customer by the Company are for use within the country in which the Customer is registered. The Customer warrants to the Company that such Services will not be used in embargoed territories or where there are currently trade sanctions in place. It is the Customer's sole and exclusive responsibility to obtain any and all appropriate approvals from the applicable government entities, which may include the US government and/or Member States of the EU and EFTA or any other government with jurisdiction, prior to exporting any Deliverables or any technical data.
- 13.5 Should any statement in the Proposal contradict any clause of these Terms, the statement in the Proposal shall take precedence over these Terms with the exception of clauses 2.1, 2.2, 2.3, 2.4, 8, 9, 10, 11, 12 and 13 of these Terms, which shall prevail.
- 13.6 The Contract contains the entire agreement between the parties with respect to the Services and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Nothing in this clause 13.6 shall limit or exclude any liability for fraud.
- 13.7 This Contract may not be modified except in writing signed by the duly authorised representatives of the parties.
- 13.8 This 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) will be governed by and interpreted in accordance with the law of Scotland. The parties to this Contract submit to the exclusive jurisdiction of the Scottish Courts in relation to any claim, dispute or matter arising out of or relating to this Contract.

- 13.9 Each party irrevocably agrees that, subject to clause 13.8, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).