

## INTELLIGENESIS LLC PRODUCT AND SERVICES AGREEMENT

This IntelliGenesis LLC Product and Services Agreement (“**PSA**”), including any Quotes, Sales Orders, Statements of Work, exhibits, addenda, attachments and/or documentation referenced at URLs, all of which are incorporated herein and hereafter collectively referred to as Agreement (the “**Agreement**”) governs the purchases of products and services owned, delivered or performed by IntelliGenesis LLC as specified in accompanying Quote, Sales Order or Statement of Work.

### 1. Definitions.

Capitalized terms have the meanings set forth in this Section 1, or in the section of the Agreement in which they first appear.

“Affiliates” of a Party means any entity that, directly or indirectly, controls, is controlled by, or is under common control with, a Party.

“Agreement” has the meaning set forth in the preamble.

“Applicable Law” means, to any Party, any law, statutes, rules, regulations, judgement, license, government order or legal principles that are applicable to this Agreement.

“Authorized Users” means solely those individuals authorized to use the Products pursuant to the license granted under this Agreement. Each Authorized User shall be subject to the terms and conditions of this Agreement and the applicable End User License Agreement.

“Buyer” means the entity to which Seller is providing Products and/or Services under the Agreement.

“Confidential Information” means any confidential, proprietary, non-public data or information or materials that is owned or controlled by either Party, in any form (whether written, oral, electronic, or otherwise), that is marked or identified as confidential or proprietary, or reasonably understood to be confidential by its nature and including by way of example and not limitation, inventions (whether or not patentable or reduced to practice), trade secrets, technique, processes, procedures, test criteria, concepts and designs (including without limitation sketches, drawings and models), know-how, algorithms and models, computer software (whether in source or object code form) and documentation related thereto, research, experimental and development work and results therefrom, design details and specifications, technical data, customer information, and business or financial information, including without limitation information related to future business plans, customer solicitations, and initiatives, sources of material and supply, sales and marketing information and strategies, solicitation response strategies, technical solutions, and other sensitive business information.

“Documentation” means user manuals, technical manuals, and any other materials provided by Seller, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of Seller’s Products and Services that are made available to Buyer by Seller. Such documentation may be updated, modified, or revised at any time without prior written notice to Buyer.

“End User License Agreement” means the end user documentation published at <https://intelligenesisluc.com/legal/>. The terms and conditions of the Products and Services provided by IntelliGenesis to Seller will form a part of this Agreement and are incorporated herein by reference.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.”

“Invoice” is a formal document issued by Seller to Buyer that outlines the details of a transaction and serves as a request for payment for goods or services that have been provided and includes the Seller’s and



Buyer's information, invoice number, date, description of goods or services, total amount due and payment terms.

"Party" means Seller and/or Buyer, each a "Party," and collectively as "Parties."

"Price" means the agreed amount required as payment provided in the Invoice for the sale of Products and/or Services, including adjustments (if any) in accordance with the Sales Order or Statement of Work.

"Products" means Seller's proprietary materials, content and information, graphics, designs, data or goods contained therein or accessible therefrom, and all updates, revisions, supplements and modifications thereto (which may be amended from time to time) that is being provided to the Buyer in accordance with the Sales Order or Statement of Work.

"Proposal" means a very detailed ordering document provided by Seller to Buyer that outlines the scope of work and includes price, objectives, timelines, responsibilities and expectations for a project or service.

"Purchase Order" means the Buyer-issued ordering document in connect with the purchase of Seller's products and/or services. The Buyer may issue a Purchase Order for its internal or administrative purposes; however, any additional or conflicting terms contained in or referenced by such Purchase Order are expressly excluded and shall have no effect or binding force.

"Quote" refers to a concise document provided by the Seller to the Buyer that outlines the cost breakdown for the products or services under consideration. It includes a brief description of the products and/or services, quantities, delivery terms, and the period for which the quote is valid.

"Sales Order" is a formal Quote that is binding and has been agreed upon and signed by both Parties under which the Seller is engaged to provide specific goods and services to the Buyer for a specific dollar amount. Each Sales Order will list product description(s), quantity, validity dates, any applicable discounts or fees, and price.

"Seller" means IntelliGenesis LLC or IntelliGenesis, which is the entity providing the Products and/or performing the Services under this Agreement.

"Services" means the proprietary services, whether live, in-person, online or recorded, Seller has agreed to perform for Buyer in accordance with the Sales Order or Statement of Work.

"Statement of Work" or "SOW" is a summarized Proposal that has been agreed upon and signed by both Parties under which the Seller is engaged to provide Services to the Buyer. Each SOW will outline the applicable conditions and the terms under which the services will be performed and includes scope, period of performance, and agreed upon price. Statements of work will be an Exhibit to this Agreement.

"Third Party" means any Party other than Buyer or Seller.

## 2. Purpose.

2.1 **Purpose.** The purpose of this Agreement is for IntelliGenesis and Buyer to enter into a PSA which provides supplement terms and conditions when purchasing IntelliGenesis' Products and Services. These ("Terms") cover the use of IntelliGenesis' consumer Products and Services listed here <https://intelligenesisluc.com/legal/>. Buyer accepts these terms when using the products, creating a user account, or by accepting and using our Services. Statement of Work ("SOW") or Sales Orders signed by both Parties will form a part of this Agreement and is incorporated herein by reference. Should any provision of the SOW or Sales Order conflict with any provision of this Agreement, the provision set forth in this Agreement shall control. Seller has the right to revise terms of use for any of its products and services from time to time, at any time, for any reason.

### 3. Overview.

**3.1 Quote or Proposal and Sales Order.** Seller may provide Buyer with a quote or proposal for products, services, prices and fees before commencement of providing such stated Products and/or Services. A Quote or Proposal shall be an estimate of the costs and should not be construed to guarantee the total cost of the Products and/or Services being provided. The actual costs may be higher or lower than those contained in the Quote or Proposal. Thereafter, Seller shall provide Buyer with a Sales Order which shall provide a true and binding total for the order, not including applicable shipping and handling charges.

**3.2 Delivery.** Seller will deliver to Buyer, at the Ship To address listed for the Buyer on the Sales Order or SOW, the deliverables or other materials specified in the Sales Order or SOW in accordance with the delivery schedule and other terms and conditions set forth in the Sales Order or SOW.

**3.3 Updates.** Seller may update, revise, replace, or suspend Products and Services, from time to time, at any time in its sole discretion.

**3.4 Timing of Deliverables; Delays.** Buyer understands that Seller's timely delivery and performance of Products and Services is dependent on Buyer's and Seller's responsibilities set forth in this Agreement and the applicable Sales Order or SOW. Accordingly, if Buyer fails to perform a responsibility set forth in this Agreement or the Sales Order or SOW, Seller shall deliver to Buyer a written notice identifying the failure and Seller's good faith estimate of the impact it will have on the schedule for the performance of Services or delivery of Products. If within 48 hours after receipt of such notice Buyer has not performed such responsibility (or such other period as may be reasonably specified by Seller to avoid delays in delivery or increase costs in performance by Seller) the delivery date of the performance of Services or delivery date of the products and deliverables directly and materially affected by Buyer's failure shall be reasonably extended.

**3.5 Limited Right of Cancellations and Returns.** Generally, all sales of Products and Services under this Agreement are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement or to cancel Services purchased under this Agreement, except as provided in Section 9. For the avoidance of doubt, all sales of Services are final at point of purchase and all sales of Products are final once they have been shipped.

### 4. Obligations of the Parties.

**4.1. Seller's Obligations.** During the Seller's engagement, Seller shall:

- (a) Devote such time and energy to the Buyer as may be required to complete the Services and deliver Products described in the Sales Order or SOW; and
- (b) Maintain complete and accurate records relating to the provisions of the Services and Products; and
- (c) Complete the Services in a professional and workmanlike manner, consistent with high professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform Services; and
- (d) Communicate promptly and reasonably cooperate with Buyer during the engagement.

**4.2 Buyer's Obligations.** During the term of this Agreement, Buyer shall:

- (a) Make on time payments in accordance with this Agreement and the Sales Order or SOW; and
- (b) Provide Buyer with materials and resources, including information materials, right to use them and;
- (c) Respond promptly to any reasonable request from Seller for instructions, information or approvals required by Seller to provide the Services or deliver the Products; and
- (d) Other information necessary for Seller's performance of the Services and/or for producing goods; and
- (e) Promptly notify Seller of any changes to the Sales Order or SOW that could affect this Agreement.

## 5. Payment.

5.1 **Invoice.** Subject to the terms of this Agreement, Seller will issue an Invoice (“**Invoice**”) for the products and services at the time of delivery and/or when services have been rendered. Invoices shall contain a description of the products and services, the quantity, the price of each item, total amount due (**Price**), invoice date, due dates, payment terms and any applicable shipping fees or discounts. Such Price shall be Seller's sole and complete compensation for all Services and Products provided unless there are Subscription Services included which shall require recurring payments which are applicable for such Subscription Services. Buyer's obligation to pay for the work shall deem to be satisfied at the time funds are received on Seller's accounts.

5.2 **Expenses.** Unless otherwise provided in the SOW, Buyer will reimburse Seller for all reasonable and customary out-of-pocket expenses incurred by Seller in connection with the performance of Services. Any such expenses are subject to Buyer's prior approval. At Buyer's request, Seller will furnish Seller with copies of receipts and other customary documentation for any expenses for which Seller requests reimbursement hereunder.

5.3 **Travel Expenses.** Any related travel expenses will be incorporated into the SOW. Seller shall obtain Buyer's written approval before any travel related expenses are incurred and invoiced.

5.4 **Pricing Changes.** Seller shall provide to Buyer a good faith estimates of the prices relating to the Products and or Services to be performed under the applicable Sales Order or SOW. Whenever Seller reasonably anticipates that the aggregate price and expenses relating to the Products or Services will exceed the original estimate, Seller shall obtain Buyer's written approval prior to delivery of Products or continuing the Services.

5.5 **Remittance of Payment.** Payment is required by the due date listed on the Invoice. Buyer shall remit to Seller, in immediately available funds, its allocation of the agreed upon price as set forth on the Invoice. Accepted payment methods include credit card, ACH, and check. Note, a three percent (3%) surcharge applies to credit card payments. If Seller chooses to pay via ACH, Seller will supply Buyer with Seller's ACH or electronic funds transfer banking details. All amounts due are to be paid in US dollars.

Attn: Accounts Payable  
IntelliGenesis LLC  
6950 Columbia Gateway Dr., Suite 450  
Columbia, Maryland 21046

Please submit any payment inquiries to: [AP@intelligenesisluc.com](mailto:AP@intelligenesisluc.com)

5.6 **Late Payments.** Payments shall be deemed to be made when payment is received by check or an electric transfer via Automated Clearing House (ACH) in Seller's bank account or charged by credit card. Any payments made five (5) calendar days after invoice is due shall be subject to a late fee of one and half percent (1.5%) of the total invoice amount or the highest rate permitted by law, if less. Seller reserves the right to delay shipment(s) or service(s) if an open invoice is overdue, until such invoice is paid. Further, Seller reserves the right to suspend delivery or services entirely until all open invoices are paid, regardless of due date specified in the invoice. Seller may request Buyer to pre-pay all fees and expenses, at Seller's sole discretion.

5.7 **Collections.** In the event that Buyer tenders a bad check (or any check that is not accepted and returned by the bank) and/or stops/cancels a credit/debit card transaction, Buyer will be in Default of the Agreement and Seller may bring a claim or cause of action against Buyer for the original compensation amount plus attorney's fees, court costs, interest, and bank penalties for the bad check and/or cancelled credit/debit card transaction. If payments are not made pursuant to this Agreement or Buyer is in default of this Agreement, Seller may terminate this Agreement prior to the date of Services or delivery of Products, as applicable.

## 6. Relationship of the Parties.

**6.1 Independent Contractors.** The Parties agree that they are and shall remain independent contractors to each other, and at no time will either Party be deemed to be the agent or employee of the other. This Agreement is not intended by the Parties to constitute or give effect to a joint venture, pooling arrangement, partnership or formal business organization of any kind, other than independent contractors. Seller will perform Services under the general direction of Buyer, but Seller will determine, in Seller's sole discretion, the manner and means by which Services are accomplished, subject to the requirement that Buyer will at all times comply with applicable law. Except as expressly set forth in this Agreement, each Party will bear full and sole responsibility for its own expenses, liabilities, and costs of operation. Neither Party is the agent of the other, and neither Party shall have authority to bind the other, except to the extent authorized herein.

**6.2 No Exclusivity.** The Parties acknowledge and agree that this Agreement does not create any exclusive relationship between the Parties.

## 7. Fees and Taxes

**7.1 Fees.** The Buyer shall pay the Buyer as follows: (a) for subscriptions for the Products, in subscription fees the amounts set forth in the applicable Sales Order, (b) for any Services, services fees in the amounts set forth in the applicable Sales Order or SOW, and (c) in connection with use of the Products, reimbursement of all third-party hosting, computing or usage charges incurred in connection with Buyer's use of the Products (with (a), (b) and (c) collectively referred to herein as, the "**Fees**"). Buyer acknowledges and agrees that the Fees presented in any Sales Order or SOW are calculated based upon information and materials provided by Buyer and relative to Buyer's technical specifications and documentation, and if Buyer's actual technical specifications and documentation vary from what is stated, Seller shall have the right to adjust the Fees based on such changes in any final Invoice. The Fees do not include any customizations to any Service. Unless otherwise specified in the Sale Order(s) or applicable SOW(s), all Fees are due by the due date specified on the Seller's Invoice. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. All late payments are subject to late fees charged as interest in accordance with Section 5.6.

**7.2 Taxes on Fees.** All fees are exclusive of any applicable taxes, duties, levies, tariffs or other governmental charges that may be applicable, including but not limited to sales, value-added (VAT), use, excise, or similar taxes. The Buyer shall be solely responsible for paying any such taxes (including any virtual corporate income tax, but excluding other taxes based on Seller's net income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees that may arise out of the license and services provided under this Agreement. Seller shall apply VAT to any fees and other charges on the invoice. Buyer shall make all Fee payments to Seller free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to Seller shall be Buyer's sole responsibility. Notwithstanding the above, in no event shall Buyer pay or be responsible for any taxes imposed on, or regarding, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

**7.3 Taxes.** Buyer shall be responsible for any and all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Buyer hereunder. Notwithstanding the previous sentence, in no event shall Buyer pay or be responsible for any taxes imposed on, or regarding, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

**7.4 Tax Withholding.** Buyer shall compensate Seller for any withholding tax or other applicable taxes, fees, duties, other governmental charges (excluding taxes on Seller's net income), and related expenses applicable to the Products or Services provided hereunder that Buyer may be obliged to deduct from payments to Seller.



**7.5 Indemnification.** The Buyer agrees to indemnify and hold harmless the Seller from any claims, penalties, or liabilities arising from the Buyer's failure to pay or withhold any applicable taxes or duties in connection with this Agreement.

## **8. Confidentiality.**

**8.1 Confidentiality.** From time to time during the term of this Agreement, either Party may disclose or make available (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") information that includes, without limitation, information regarding business affairs, goods and services, forecasts, confidential and/or proprietary information, and materials comprising or relating to proprietary rights, trade secrets, ideas, procedures, methods, systems, concepts, third-party confidential information, and other technical, sensitive or proprietary information that is not generally known to the public. The Parties agree that all fees under this Agreement and any Service performance data (e.g., rates) shall be deemed Seller's Confidential Information and not Buyer's Confidential Information. Confidential Information shall not include information that Receiving Party can demonstrate: i) was in the public domain or otherwise publicly available when disclosed to Receiving Party; ii) is rightfully received from a third party having no direct or indirect secrecy or confidentiality obligation and without any breach of confidentiality by such third party; iii) by written evidence is shown to have been independently developed by Receiving Party who did not have any direct or indirect access to the Confidential Information; and iv) is approved for release by written authorization by Disclosing Party.

**8.2 Protection of Confidential Information.** Receiving Party shall: (i) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use, publish, disseminate or otherwise disclose, or permit or facility the disclosure of Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement or Applicable Law by restrictions regarding use and disclosure of such information; and (iii) not disclose any such Confidential Information to any person or entity, except to Receiving Party's employees, consultants, accountants and counsel ("**Representatives**") who must know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement, and who have agreed in writing to be bound by, or who otherwise are subject to, confidentiality obligations consistent with the provisions of this Agreement. Receiving Party shall be responsible for any breach of this Section 8.2 caused by any of its Representatives. The provisions of this Section 8.2 shall survive termination or expiration of this Agreement for any reason for a period of three (3) years after such termination or expiration; provided, that with respect to any Confidential Information constituting trade secrets, the obligations under this Agreement shall last for so long as such qualifies as a trade secret under applicable federal, state, and/or local law. Notwithstanding the expiration of any confidentiality obligations, use of any item of Confidential Information shall continue to be governed by applicable law, including, without limitation, trade secret, patent and copyright law.

**8.3 Compelled Disclosure.** If the Receiving Party is required by a court order or other governmental authority to disclose the Disclosing Party's Confidential Information, the Receiving Party may disclose only that portion of the Confidential Information which, based on the advice of its outside counsel, is legally required to be disclosed and shall use commercially reasonable efforts to obtain assurances from the applicable court or governmental authority that such Confidential Information will be afforded confidential treatment. Prior to doing so, however, to the extent permitted by law, the Receiving Party will give the Disclosing Party prompt written notice of the court order or other legally required disclosure so that the Disclosing Party may seek, at its expense, a protective order or other appropriate remedy with the Receiving Party's reasonable assistance.

**8.4 Injunctive Relief.** Each Party agrees that a violation of this Section 8 by the Receiving Party may cause the Disclosing Party to suffer immediate and irreparable harm and that monetary damages may not be a sufficient remedy. The Disclosing Party will have, in addition to all other rights and remedies available, the

right to seek injunctive or equitable relief to prevent a breach and to secure enforcement of the restrictions set forth in this Section 8, without any requirement to post a bond or surety. In the event of litigation under or in relation to this Section 8, the non-prevailing Party will reimburse the prevailing Party for all reasonable costs and expenses (including reasonable attorneys' fees) associated with the litigation.

## 9. Term and Termination.

**9.1 Term of Agreement.** Unless terminated earlier as set forth below, the term of this Agreement will commence on the "effective date" or "start date" stated in the Seller's Sales Order or SOW and will remain in force and effect until the later of (i) the expiration of the Subscription services listed in the Sales Order; (ii) completion of the Services; (iii) shipment of Products to Buyer (the "**Term**"). The initial term of subscription services shall be specified in the Sales Order (the "**Subscription Term**"). After the expiration of the Subscription terms, the subscription services may be renewed for successive subscription terms ("**Renewal Term**"). Seller has the right to change the price(s) associated with any previously executed Sales Order and/or SOW. The terms ("**Period of Performance**") for Services shall be specified within the SOW.

**9.2 Termination for Breach.** Either Party may terminate this Agreement, including any Sales Order or SOW, if the other Party breaches any material term of this Agreement and fails to cure such breach within ten (10) calendar days following written notice thereof from the non-breaching party.

**9.3 Termination for Convenience.** Either Party may terminate this Agreement (including all SOW) at any time, for any or no reason, upon at least sixty (60) calendar days written notice.

**9.4 Temporary Suspension.** The Seller may suspend Buyer's right to access or use any portion or all of a Product immediately upon notice to the Buyer if the Seller determines (i) that the Buyer is in breach of the End User License Agreement or material breach of this Agreement; (ii) the Buyer's actions or business systems pose a risk to the security, safety, or integrity of the services, systems, or other users or Seller; (iii) the Buyer may subject the Seller, and its affiliates, or any third party to liability; (iv) the Buyer has ceased to operate in the ordinary course, and an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (v) the Buyer has failed to pay any amounts due within thirty (30) days of due date as specified in the Invoice; or (vi) Buyer is in violation of any applicable laws, regulations or licensing agreements.

(a) Notification of Suspension. The Seller will notify the Buyer in writing, detailing the reason for the suspension and the actions required to remedy the situation, if applicable. Suspension of services will remain in effect until the issue is resolved to the satisfaction of the Seller or this Agreement is otherwise terminated in accordance with this Section 9.

(b) Reinstatement of Service. Services will be reinstated as soon as the Buyer addresses the issue that caused the suspension, including any necessary payments, corrective actions, or compliance measures. The Buyer shall bear any additional costs associated with the suspension, including reconnection fees, if applicable.

(c) Limitation of Liability. The Seller shall not be liable for any damages, losses, or costs incurred by the Buyer because of the suspension of service in accordance with the provisions of Section 9.4.

**9.5 Effect of Termination.** Upon the expiration or termination of this Agreement for any reason, (i) the provisions of this Agreement shall continue to apply to all Sales Order and SOWs accepted by Seller prior to the effective date of such termination; (ii) all rights granted to Buyer under this Agreement and the applicable Sales Order or SOW shall immediately terminate; (iii) Buyer will promptly return; or if instructed by Seller, destroy all Seller's Confidential Information in Buyer's possession or control; (iv) Buyer will pay Seller any accrued but unpaid fees due or that have incurred through the date of termination and payable to Seller within fifteen (15) calendar days. Except in the case of termination by Buyer under Section 9.2 due to an uncured material breach by the Seller, the Buyer shall not be entitled to any refund or credit of any pre-paid fees or charges; (v) Notwithstanding anything in this Agreement to the contrary, neither Party shall be required to dispose of Confidential Information held electronically in archive or back-up systems in

accordance with their respective archiving or back-up policies, and (vi) each Party may retain a copy of any Confidential Information that it must retain to comply with its record retention policies or any applicable law or regulation, provided, that in each case such information shall remain subject to this Agreement and such Party shall not retain any Confidential Information beyond the period required by its archiving or back-up policies, record retention policies or any applicable law or regulation. Expiration or termination of this Agreement shall not act as a waiver of any breach of this Agreement and shall not act as a release of either Party from any liability for breach of such Party's obligations under this Agreement. Neither Party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a Party shall be without prejudice to any other right or remedy of such Party under this Agreement or Applicable Law. Except with respect to any outstanding payment on the part of Buyer; those provisions that survive the termination of this Agreement as set forth in the Survival provision below; and any liabilities incurred by either party during the term of the Agreement, neither Party shall have any further obligation or liability to the other under this Agreement.

9.6 **Survival.** Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 6, 8,9, 10, 11,12, 13,14 and 15 shall the termination or expiration of this Agreement.

## **10. Warranties, Disclaimers, Limitation of Liability and Remedies.**

10.1 **Representations and Warranties of Seller.** Except for any representations and warranties that are expressly stated in this Agreement and End User License Agreements, all Products and Services are provided on an "AS IS" basis and Seller disclaims all other express and implied representations and warranties, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, and error-free or uninterrupted operation, as well as any warranties arising from a course of dealing, course of performance or usage of trade. To the extent that a Party may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

10.2 **Performance Standard.** Seller warrants that Services will be performed in a thorough and professional manner, consistent with high professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform Services. The Services shall confirm to or exceed the specifications described by the SOW as well as the generally accepted standards in the industry for similar services. Seller's sole obligation for breach of the of foregoing warranty is to re-perform the applicable Services at no charge to the Buyer.

10.3 **Non-Infringement.** Seller represents and warrants that Products and Services will not infringe, misappropriate or violate the rights of any third party, including, without limitation, any Intellectual Property Rights or any rights of privacy or rights of publicity, except to the extent any portion of the Products and Services is created, developed or supplied by Buyer or by a third party on behalf of Buyer. Buyer warrants that they have all the rights for the intellectual property provided to Seller under the Agreement, at the same time in case of any claims presentation against Buyer or lawsuits related to the violation of the third parties' rights in connection to the use of such results by Seller, the Buyer shall settle such claim or take other appropriate actions to exclude the occurrence of costs and damages by Seller, and, if they do occur, reimburse them to Seller in full.

10.4 **Disclaimers.** Seller warrants that all Products manufactured by Seller shall, at the time of sale, comply with applicable Seller specifications. All Products not manufactured by Seller are sold only with the warranties provided by the manufacturer of products, if any. EXCEPT FOR THE EXPRESS WARRANTY SET FOR IN SECTION 10.4, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE SERVICES OR WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY



REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN.

**10.5 Limitation of Liability.** IN NO EVENT SHALL SELLER HAVE LIABILITY TO BUYER OR ANY THIRD PARTY UNDER ANY THEORY FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OR EQUIPMENT DOWN TIME, AND LOSS OF OR CORRUPTION TO DATA ARISING UNDER OR IN CONNECTION TO THIS AGREEMENT OR ANY BREACH THEREOF, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. THE LIABILITY OF SELLER FOR ANY CLAIMS, LIABILITIES, ACTIONS OR DAMAGES ARISING OUT OF OR RESULTING TO THIS AGREEMENT, HOWSOEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING BREACH OF CONTRACT OR WARRANTY, TORT, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE, SHALL NOT, IN THE AGGREGATE, EXCEED THE AMOUNTS PAID TO SELLER FOR SERVICES PERFORMED HEREUNDER.

**10.6 Time-Bar.** Subject to the limitations and other provisions of this Agreement, no claims arising out of or in connection with this Agreement or any Products or Services may be brought by either Party more than one (1) year after the date on which the Party became aware, or should have reasonably become aware, of the facts giving rise to such claim.

**10.7 Misuse.** The limitations on liability set forth in Section 10 shall not apply to (i) any losses or damages that are solely caused by a Party's gross negligence or willful misconduct; or (b) claims of personal injury or death. It is agreed that the limitations set forth in Section 10 apply on an aggregate basis to claims asserted by Buyer against Seller and any third party who may be jointly and severally liable with Seller or who may have contribution rights against Seller.

**10.8 Survival.** The limitations of liability set forth in this Section shall survive and continue in full force and effect.

**10.9 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

**10.10 Compliance with Laws.** Buyer shall at all times comply with all laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Products and Services. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Products or Services and (b) not engage in any activity or transaction involving the Products, by way of shipment, use, or otherwise, that violates any law.

## **11. License Grant, Use Restrictions and Third-Party Content.**

**11.1 License.** Subject to and conditions upon the terms and conditions hereof, and the Buyer's compliance with the terms and conditions of any Seller's End User License Agreement, Seller grants to Buyer a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable license during the Term to (i) access, and use, and permit Authorized Users to access and use, the features and functionality of the purchased Products and Services; and (ii) use the Documentation solely in connection with the Buyer's purchased Products and Services.

**11.2 Use Restrictions.** Buyers and End Users shall not (i) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other proprietary rights notices provided on Seller's Products or Documentation; or (ii) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Products or any part thereof; (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available, or otherwise

provide any access to or use of Seller's Products, or any features or functionality of the Product's Software, to any Third Party for any reason; or (iv) access or use the Products in a way intended to avoid incurring fees or exceeding any usage limits set forth in the Sales Order or SOW; engage in any activity that interferes with or interrupts the use of the Product(s); combine Products or any part thereof with or incorporate any part thereof in, any other programs; (v) use Products and Documentation for the development of a competing software product or service, or any other purpose that is to the Seller's commercial disadvantage; (vi) access or use the Products in violation of any law, regulation or rule.

**11.3 Third Party Materials.** Seller's Products may include software, content, data and other materials, including related documentation, that are owned by other Parties other than the Buyer and that are provided to Seller on license terms that are in addition to and/or different from those contained in this Agreement and End User License Agreements. Seller does not control Third Party content nor is Buyer responsible for any Third Party's services, accuracy, availability, reliability, security, substance or completeness.

**11.4 Maintenance and Support.** Subject to the license(s) and Products purchased by Buyer, basic maintenance and support services may be included. Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches, and other error corrections (collectively, "**Updates**") as Seller makes generally available free of charge to all Buyers of Seller's Product(s) then entitled to maintenance and support services. Seller may develop and provide Updates in its sole discretion, and Buyer agrees that Seller has no obligation to develop any Updates at all or for particular issues.

## **12. Work Product Ownership.**

**12.1** All electronic files, data, videos, media, designs, inventions and/or other work product, including any adaptations thereof (collectively, "**Work Product**") developed by Seller on Buyer's behalf, or developed using Buyer's Confidential Information, are and shall be the sole and exclusive property of Buyer. Seller agrees that the Work Product is specifically ordered or commissioned by Buyer and constitutes works made for hire authored by Buyer under 17 U.S.C §101. To the extent that any of the Work Product is not work made for hire, Seller hereby conveys, grants and assigns to Buyer all rights, title and interest worldwide in and to such Work Product, all physical elements thereof, all intangible right thereto, and all contractual rights and obligations relating thereto, for all uses and purpose whether now known or hereafter created. Buyer represents, warrants and covenants that no Work Product produced by Seller under this Agreement or methods or processes used by Seller actor in performing services under this Agreement, will not infringe the right of any third party under the intellectual property and similar laws of the United States. The provision of this Section shall survive expiration or termination of this Agreement.

## **13. Indemnification.**

**13.1 By Buyer.** Buyer hereby agrees to indemnify, defend and hold Seller and its officers, members, managers, personnel, employees, agents, subcontractors, successors, heirs and permitted assigns (collectively, "**Seller's Indemnitees**"), harmless from and against any and all claims, suits, liabilities, losses, damages, deficiencies, penalties, costs and expenses (including reasonable attorneys' fees as well as other costs of litigation), the cost of enforcing any right to indemnification under this Agreement (collectively, "**Losses**") relating to, arising out of or resulting from any claim of a third party or Seller's Indemnitees arising out of or occurring in connection with: (i) Buyer's conduct; (ii) any violation by Buyer of applicable laws or regulations, (iii) negligent or intentional acts or omissions of Buyer or its personnel, (iv) any breach by Buyer of any terms of this Agreement or (v) Buyer's infringing or misappropriating the Intellectual Property Rights of a third party by the use of the Products. Provided, however, that Buyer shall not have a duty of indemnification to the extent that the Losses arise due to the negligent or willful act or omission of Seller.

**13.2 By Seller.** Seller hereby agrees to indemnify, defend and hold Buyer and its officers, members, managers, personnel, employees, agents, subcontractors, successors, heirs and permitted assigns (collectively, "**Buyer's Indemnitees**"), harmless from and against any and all Losses relating to, arising out of or resulting from any claim of a third party or Buyer Indemnitee arising out of or occurring in connection

with: (i) negligent or intentional acts or omissions of Seller or its personnel or breach by Seller in the performance of the Services or delivery of the Products, (ii) any violation by Seller of applicable laws or regulations, (iii) any breach by Seller of any terms of this Agreement; or (iv) Seller's products or services infringing or misappropriating the Intellectual Property Rights of a third party. Provided, however, that Seller shall not have a duty of indemnification to the extent that the Losses arise due to the negligent or willful act or omission of Buyer.

**13.3 Sole Remedy.** THIS SECTION 13 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY OF EACH INDEMNIFIED PARTY FOR ANY LOSSES COVERED BY THIS SECTION 13.

## **14. Dispute Resolution; Arbitration**

14.1 The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written Notice of any dispute not resolved in the normal course of business. Within fifteen (15) days of receipt of the Notice, the receiving Party shall submit to the other a written response. The Notice and the response shall include a statement of each Party's position and a summary of arguments supporting that position and the name and title of the executive who will represent that Party and any other person who will accompany that executive. Within thirty (30) days after delivery of the disputing Party's Notice, the executives of both Parties shall meet at a mutually-acceptable time and place and, thereafter, as often as they deem reasonably necessary to attempt to resolve the dispute. All negotiations pursuant to this section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

14.2 If the dispute has not been resolved by negotiation within forty-five (45) days after the disputing Party's Notice has been given to the other Party, the Parties shall resolve any remaining dispute by binding arbitration as set forth in this Section 14; provided that the provisions of this Section 14 will not apply to any claims for equitable relief, provided that either Party seeking equitable relief gives immediate written Notice, in accordance with Section 15.5 of this Agreement, if a claim for equitable relief is pursued.

14.3 Except for any claims for equitable relief, and claims related to the ownership of any intellectual property, all disputes, claims or controversies arising from or relating to this Agreement, the breach of this Agreement, or the relationships that result from this Agreement, including but not limited to any dispute regarding the validity of this arbitration clause or the entire Agreement, shall be resolved by binding arbitration administered by the American Arbitration Association ("**AAA**") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

14.4 The arbitration shall be heard by three (3) neutral arbitrators. Each Party shall choose one arbitrator, and those two arbitrators shall choose the third arbitrator, who shall serve as the chair of the arbitration panel. Each arbitrator must be a practicing attorney in good standing with no actual or potential conflicts of interest. Each arbitrator must be independent of all Parties, witnesses and legal counsel.

14.5 The arbitration hearing shall be conducted in Howard County, Maryland. Any judicial challenge to the arbitration award shall be filed in a court of competent jurisdiction sitting in Howard County, Maryland.

14.6 The prevailing Party shall be awarded all reasonable fees and costs, including reasonable attorneys' fees and costs, expert witness fees and costs and the fees and costs of the arbitrators incurred in the arbitration and related proceedings. If both Parties are awarded relief, the arbitration panel shall determine the prevailing Party.

## **15. General Provisions.**

**15.1 Entire Agreement.** This Agreement and any Exhibit, Sale Orders or SOWs hereto (and any other documents to be executed in connection herewith), contain the entire, complete and integrated agreement between the Parties with respect to the subject matter hereof, and supersede any prior contemporaneous understandings, agreements or representations by or between the Parties, written or oral, express or implied, which may have related to the subject matter hereof in any way. Each Party represents that there is no agreement between itself and any other person, entity or group that would impair the full force and effect of this Agreement.

**15.2 Assignment.** Buyer shall not assign or otherwise transfer any of its rights under this Agreement, Sales Order or SOW, in whole or in part, whether voluntary, by operation of law or otherwise, without the Seller's prior written consent. Any assignment or transfer in violation of this Section 15.2 will be null and void. Subject to the foregoing, this Agreement and all the terms and provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**15.3 Preamble; Recitals.** The Preamble and the Recitals set forth in this Agreement form a material basis for this Agreement and are expressly incorporated herein and made a part hereof.

**15.4 Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland (without regard to any conflict of laws principle that would apply the law of another jurisdiction). Any legal action or proceeding arising under this Agreement shall be held in Howard County, Maryland, and the Parties irrevocably consent to personal jurisdiction in the State of Maryland and to venue in Howard County, Maryland whether the matter is in state or the appropriate federal court.

**15.5 Attorneys' Fees.** In the event of any action or proceeding to interpret or enforce this Agreement, the prevailing party in such action or proceeding (i.e., the party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including, without limitation, all court costs, reasonable attorneys' fees and expert fees) as the prevailing party may incur in the pursuit or defense thereof.

**15.6 Notices.** All notices required or permitted under this Agreement will be in writing and sent to the addresses set forth in the Sales Order or SOW, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. Any notice or demand shall be deemed to have been given upon actual delivery (or refusal of delivery). Any Party may change its address or notices under this Agreement by given written notice to the other Party in accordance with this Section 15.6.

**15.7 Waiver.** Any waiver of a Party's rights under this Agreement may only be made by a writing signed by the Party waiving such rights, and the failure of any Party to enforce at any time any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall not be construed to be a waiver of the right to assert any of the same at any time thereafter, nor shall it be construed in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

**15.8 Severability.** In the event any portion of this Agreement is deemed void, invalid, illegal or unenforceable for any reason by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect, and shall in no way be affected, prejudiced or disturbed thereby. In the event any portion of this Agreement is deemed invalid, illegal or unenforceable or in conflict with any law of the Federal, State, or local government having jurisdiction over this Agreement, the Parties agree to the extent possible, to include a replacement provision, construed to accomplish its originally intended effect, that does not violate such law or regulation.

**15.9 Modifications and Amendments.** No modification or amendment to this Agreement shall be binding upon the Parties unless made in writing and signed by each Party's authorized representative.

**15.10 Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which when so executed will be deemed an original, but all such counterparts shall together constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by e-mail delivery of a ".pdf" data file shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement and signature pages thereof for all purposes. The Parties agree any electronically signed document deems (i) to be "in writing," (ii) to have been properly signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed.

**15.11 Headings.** The headings and titles of the various sections of this Agreement are intended solely for convenience of reference and are not intended to define, limit, explain, expand, modify or place any construction on any of the provisions.

**15.12 Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING ANY PO, SOW, EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY SALES ORDER, SOW, EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**15.13 Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations Buyer to may payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (i) acts of God; (ii) flood, fire, earthquake, pandemics, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; and (vi) national or regional emergency. The Impacted Party shall give notice within fifteen (15) calendar days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of sixty (60) calendar days following written notice given by it under this Section 15.13, either Party may thereafter terminate this Agreement upon (30) calendar days' written notice.

**15.14 Privacy Policy.** Seller's Privacy Policy describes the way Seller collects, uses, and stores data and can be found at [www.intelligenesisluc.com/legal](http://www.intelligenesisluc.com/legal). This Agreement shall include and incorporate the Privacy Policy by reference.

**15.15 Order of Precedence.** In the event of any conflict, inconsistency, or ambiguity between the documents or provisions in this Agreement, the following order of precedence shall apply:

- (1) This Agreement (including any Exhibits attached hereto);
- (2) The applicable Sales Order or Statement of Work, including pricing;
- (3) End User License Agreements;
- (4) Any other documents referenced in this Agreement.