

## Schedule 1: Standard Terms and Conditions



### 1. Definitions

In this Proposal, capitalised terms are defined terms, and have the meaning as set out in the below Definitions unless otherwise defined by the context in which they are first introduced:

**Agreement** means this Proposal once executed by the Client at Schedule 2, and includes any Schedule attached to this Agreement or subsequently appended to this Agreement by the mutual consent of the Parties.

**Background IP** means any Intellectual Property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Proposal.

**Business Day** means any day that is not a Saturday, Sunday, or Public Holiday in Western Australia.

**Client** means the Client named in the Execution Schedule for this Agreement and includes the directors, officers, employees, contractors, representatives (including, without limitation, investment advisers, legal advisers and accountants) or agents of the Client, its parent company or Related Bodies Corporate.

**Confidential Information** means:

- (a) the terms of this document;
- (b) all information (in any form) relating to the Client made available to intelliv8 at any time in connection with this Proposal;
- (c) any information that concerns the business, operations, finances, plans, personnel or customers of the Client, which is disclosed to, or acquired by, intelliv8 (including any information that is derived from such information); and
- (d) includes Client data, but does not include information which:
  - (i) is or becomes public knowledge other than by a breach of this Agreement; or
  - (ii) has been independently developed by intelliv8 without breach of this Agreement or acquired by intelliv8 from a source which was not subject to a duty of confidentiality to the Client (but only if, to intelliv8's knowledge, the source is not prohibited from disclosing such Confidential Information to intelliv8).

**Consultant** means intelliv8's directors, principals or consultants that will perform the Services.

**Fee** means the amounts to be paid to intelliv8 by the Client for the provision of the Services and for other fees, expenses or charges permitted under this Agreement.

**GST** means goods and services tax applicable on any transaction under the GST Law.

**Intellectual Property** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**intelliv8** means intelliv8 Pty Ltd.

**Party** means the Client or intelliv8 as the context provides, and **Parties** means both of them.

**Project IP** means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Agreement.

**Proposal** means any letter or email from intelliv8 identified therein as a "Proposal", and to which these Terms and Conditions are either attached or included by reference.

**Public Holiday** means any day declared to be a public holiday as gazetted in Western Australia.

**Related Body Corporate** has the same meaning as under the *Corporations Act 2001 (Cth)*

**Upfront Fees** means any Fees that are payable on acceptance of this Agreement, or in advance of intelliv8 commencing work, and may for example include mandate fees, or prepayment amounts.

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### 2. intelliv8 Standard Terms and Conditions

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| <b>Validity</b>              | <ol style="list-style-type: none"> <li>1. This Proposal and the associated quotation are valid for a period of 30 days from the date set out on page 1 if a letter, or if an email, from the date the email was sent.</li> <li>2. The Client will be taken to have accepted the Proposal in its entirety by executing it as an Agreement at Schedule 2 ("Agreement") or by providing to intelliv8 any other written notice (e.g., email, issue of a purchase order) indicating the Client's acceptance of the Proposal or requesting intelliv8 to start work ("Acceptance").</li> <li>3. If these terms and conditions overlap or conflict with terms sought by the Client (for example through the issue of a purchase order to intelliv8), these terms will take precedence and override those terms.</li> <li>4. If the Client seeks variations to the Proposal, intelliv8 will prepare a new cost estimate and submit a new proposal for acceptance and execution as an Agreement by the Client.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Services</b>              | <ol style="list-style-type: none"> <li>5. The Services to be provided by intelliv8 are set out in the Proposal.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>intelliv8 Performance</b> | <ol style="list-style-type: none"> <li>6. intelliv8, through its directors, principals and consultants (Consultant) will perform the Services to the best of its ability, with due care and diligence and in accordance with all applicable laws and regulations.</li> <li>7. In recognition of intelliv8 being a small business, in the event one or more of intelliv8's Consultants is affected by illness or is otherwise unable to perform the Services within the specified timeframes due to circumstances outside of intelliv8's control, and where the affected Consultant(s) cannot be readily replaced, intelliv8 and the Client will negotiate in good faith to amend the conditions of the contract to reach a mutually agreeable position, which must not be unreasonable.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Client Obligations</b>    | <ol style="list-style-type: none"> <li>8. The Client agrees: <ol style="list-style-type: none"> <li>a. to provide the Consultant with reasonable assistance, including access to material and information the Consultant considers necessary to perform the Services in this Agreement, to enable the Consultant to effectively and efficiently provide said Services;</li> <li>b. to indemnify intelliv8 and the Consultant from and against any legal costs, debt collection agency fees, court filing fees and/or disbursements incurred by intelliv8 or the Consultant for collection or attempted collection of any Fees that remain unpaid when due but are otherwise payable by the Client in connection with this Agreement.</li> </ol> </li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Intellectual Property</b> | <ol style="list-style-type: none"> <li>9. intelliv8's Background IP remains vested in intelliv8, and the Client's Background IP and all Intellectual Property Rights in the Client's data, technical material and confidential information remains vested in the Client.</li> <li>10. intelliv8: <ol style="list-style-type: none"> <li>a. grants the Client a worldwide, non-exclusive, perpetual, royalty-free, irrevocable, transferable licence to use intelliv8's Background IP (including the right to assign and sub-licence intelliv8's Background IP), to the extent necessary to use Services deliverables and the Project IP; and</li> <li>b. assigns to the Client all Project IP upon the creation of that Project IP, subject to the Client having paid intelliv8 the Fees.</li> </ol> </li> <li>11. The Client: <ol style="list-style-type: none"> <li>a. grants intelliv8 a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP and the Client's Background IP to the extent required for intelliv8 to perform the Services; and</li> <li>b. grants intelliv8 a worldwide, exclusive, perpetual, royalty-free, irrevocable, transferable licence to use and enjoy the constituent elements of the Project IP that are improvements to or derivative works of intelliv8 Background IP (including the right to assign and sub-licence such improvements to or derivative works of intelliv8's Background IP).</li> </ol> </li> <li>12. Notwithstanding anything in clauses 9 – 11 above: <ol style="list-style-type: none"> <li>a. this Proposal is proprietary to intelliv8 and has been prepared for the sole and exclusive use of the party or organisation to which it is addressed. This Proposal may not be made available to anyone other than the addressee or persons within the addressee's organisation who are designated to evaluate or consider the Proposal. intelliv8's Proposals may be made available to other persons or organisations only with the express permission of intelliv8.</li> <li>b. Copyright in this Proposal is owned by intelliv8. All rights reserved. No part of this work may be reproduced or transmitted in any form by any means, except as may be permitted, in writing by intelliv8.</li> </ol> </li> </ol> |
| <b>Invoicing and Payment</b> | <ol style="list-style-type: none"> <li>13. The Client agrees to pay the relevant Fees (or, where applicable, the Fees attributable to the Option selected and the Terms for that Option) set out in the Proposal.</li> <li>14. If the law imposes GST on any amounts payable to intelliv8 pursuant to this Agreement, then subject to intelliv8 issuing a tax invoice in accordance with the GST law, the Client shall pay to intelliv8 the respective amount plus at the same time an additional amount equal to the GST imposed.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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15. intelliv8 will issue the Client tax invoices in accordance with the GST law. Unless otherwise specified in this Agreement, intelliv8 will issue a tax invoice:
  - a. as soon as is practicable following execution of this Agreement, for payment of Upfront Fees;
  - b. monthly, for payment of Fees in arrears of Services performed in a given month, with the invoice to be issued between the last Business Day of that month and by the fifth Business Day of the following month;
  - c. as soon as practicable upon the completion or termination of the Services.
16. Payment terms are 7 days net from date of intelliv8 invoice issued pursuant to clause 15.
17. The Client agrees:
  - a. to pay the Fee and approved Expenses when invoiced and due, including any administration fees and interest charges in accordance with clause 17.b and 17.c.
  - b. to pay an administration fee of \$21.50 (excluding GST) for any invoices that are not paid in full by the due date stated on the invoice.
  - c. to pay interest on any amount not paid by its due date, accruing daily (and not compounding) from the due date until the date of payment in full, at the rate of 10% per annum.
18. If the Client disputes any amount in an invoice, the Client must, within 7 days of the date of that invoice, give intelliv8 written notice that identifies the disputed amount and details the issue in dispute (a Notice of Dispute). The Client and intelliv8 must meet within a further 7 days to endeavour to resolve the dispute, and intelliv8 must consider the dispute in good faith. The parties will then have up to a further 7 days to resolve the dispute. If the dispute remains unresolved at the end of that period, either party may, subject to first notifying the other party in writing, commence litigation to obtain a judgment resolving the dispute. The Client must in all cases pay by the due date any part or percentage of an invoice that is not the subject of a Notice of Dispute. If the Client does not give a Notice of Dispute within 7 days of the date of an invoice in accordance with this clause, then, except in the case of intelliv8's fraud, wilful misconduct or manifest error, the Client is deemed to have accepted the Services and the Fees detailed in that invoice, waives its right to subsequently dispute those items, and must pay all amounts invoiced for those items when due. Subject to the Client's deemed acceptance above, nothing in this clause prevents or limits a party's right to take legal action in relation to a dispute notified under this clause. This clause does not exclude or limit any right of the Client that cannot lawfully be excluded or limited (see clause 30.b).
19. In the event of non-payment of Invoices by the Client, intelliv8 has the right to:
  - a. cease all Services until all outstanding amounts are paid in full;
  - b. charge the Client for all reasonable costs and expenses incurred by intelliv8 arising from the suspension and subsequent resumption of the Services once payment is made; and
  - c. terminate this agreement should the situation of non-payment continue for more than forty-five (45) days.
- Expenses**
  20. All expenses incurred by intelliv8 or the Consultant, which are reasonable and customary in nature and supported by appropriate documentation, will be reimbursed by the Client at Cost (ex GST) plus 10% administration fee. Where agreed in advance with the Client, reasonable expenses may include:
    - a. Required travel related expenses including airfares, hotels, meals, ground transport, and other travel-related costs.
    - b. Graphic design and printing expenses for outputs and reports.
    - c. Venue and catering expenses.
    - d. Research costs, for any client-approved research.
    - e. Other expenses, as agreed.
- Disputes**
  21. If a dispute arises between the parties in connection with this Agreement (other than a dispute about Fees, which clause 18 governs), a party may give the other party written notice of the dispute detailing the issue in dispute. The parties must then meet within 7 days of that notice to seek to resolve the dispute, and up to a further 7 days after that meeting to resolve it. Each party must continue to perform its obligations under this Agreement, including payment of any amount not in dispute, while a dispute is being resolved.
  22. If the dispute is not resolved within the periods in clause 21, either party may, subject to first notifying the other party in writing, commence litigation in relation to the dispute. Nothing in clause 18 or this clause prevents or limits a party's right to take legal action in relation to a dispute, and a party may at any time seek urgent injunctive or interlocutory relief from a court.
- Liability**
  23. To the extent permitted by law, intelliv8 excludes all implied warranties and conditions. Where intelliv8 fails to comply with a guarantee that cannot be lawfully excluded, its liability is limited, at its option, to re-supplying the Services or paying the cost of re-supply.
- Liability Cap**
  24. intelliv8's total aggregate liability arising out of or in connection with this Agreement (whether based on breach of contract, tort (including negligence), pursuant to indemnification, under statute, in equity or otherwise) is limited

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|                                | to the greater of AU \$5,000 or 50% of the total amount of Fees paid or payable by the Client under the Agreement. This limit does not apply to liability for intelliv8's fraud, wilful misconduct, or for death or personal injury caused by intelliv8's negligence, or to any liability that cannot be lawfully limited (see clause 30.b).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Termination with Notice</b> | <p>25. Either party may terminate this Agreement:</p> <ul style="list-style-type: none"> <li>a. for convenience by giving 30 days' prior written notice to the other party,</li> <li>b. immediately by written notice if the other party commits a material breach that is not remedied within 14 days after written notice requiring it to do so, or if the other party becomes insolvent, is wound up, has a receiver, controller, or administrator appointed, or is unable to pay its debts as they fall due,</li> </ul> <p>provided that termination does not affect any rights or obligations accrued before termination. The Intellectual Property, Invoicing and Payment (for amounts owing), Confidentiality, Liability, Liability Cap, Disputes and General clauses survive termination.</p> <p>26. If the Agreement is terminated by the Client prior to the completion of the Services, the Client is liable to intelliv8 for all Services performed and all expenses reasonably incurred by intelliv8 up to and including the date of termination (including any deferred Fee component), including all reasonable costs and expenses incurred by intelliv8 in complying with the termination.</p>                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Confidentiality</b>         | <p>27. Confidentiality: Each party must keep the other party's Confidential Information confidential, must use it only for the purposes of this Agreement, and must not disclose it to any third party, except (a) to its personnel, professional advisers or contractors who need to know it and are under equivalent obligations of confidence, or (b) to the extent disclosure is required by law or by a regulatory authority. This clause survives termination of this Agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Tacit knowledge</b>         | <p>28. intelliv8, in delivering the services, may generate knowledge, concepts and ideas that are in the minds of its personnel, documented or otherwise ("Tacit Knowledge"). Providing that intelliv8 is not in breach of confidentiality and intellectual property conditions of its engagement with the Client, nothing shall restrict intelliv8 from freely using such Tacit Knowledge in any way including the creation of derivative works and/or to provide similar services for a third party.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Special Conditions</b>      | <p>29. Not Used.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>General</b>                 | <p>30. General</p> <ul style="list-style-type: none"> <li>a. Governing Law: This Agreement is governed by and is to be construed in accordance with the laws of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts.</li> <li>b. Consumer Law: Nothing in this Agreement excludes, restricts or modifies any right, guarantee, condition, warranty or liability that cannot be lawfully excluded, restricted or modified (including under the Australian Consumer Law).</li> <li>c. Severance: A provision of this Agreement applies only to the extent permitted by law, and if any provision is void or unenforceable it is severed without affecting the remainder.</li> <li>d. Counterparts: This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.</li> <li>e. Notices: A notice or other communication under this Agreement must be in writing and may be given by email to the recipient's usual business email address. It is taken to be received when the email enters the recipient's email information system, or the next Business Day if sent after 5.00pm or on a day that is not a Business Day.</li> <li>f. Entire Agreement: This Agreement is the entire agreement about its subject matter and supersedes all prior representations, understandings and agreements, and no party has relied on any representation not set out in it.</li> </ul> |

## Schedule 2: Execution



**EXECUTED** as an Agreement.

**Executed by intelliv8 Pty Ltd ABN 49 639 849 442** by its Authorised Representatives:

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Signed by Authorised Representative

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Signed by Authorised Representative

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Print Name/Position

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Print Name/Position

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Date

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Date

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### EXECUTED BY THE CLIENT

**Executed** for and on behalf of

**ABN** \_\_\_\_\_ in accordance  
with s 127(1) of the *Corporations Act 2001*  
(Cth).

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Signed by Secretary / Director

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Signed by Director

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Print Name/Position

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Print Name/Position

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Company Seal (Optional)

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Company Seal (Optional)

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Date

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Date