

Terms and Conditions of Service Agreement

IntelligenceBank Pty Ltd (ABN 138 768 564) (“IntelligenceBank”) owns and operates the IntelligenceBank and Red Marker Services and provides its customers and their Authorized Users with access to and use of these Services. Please read these Terms as they form a contract between the Customer and IntelligenceBank in respect of the Customer’s access to and use of the Services. By using the Services, the Customer and its Authorized Users agree to be bound by these Terms. If there are any questions about these Terms, please contact IntelligenceBank at terms@intelligencebank.com and a member of our team will be in touch.

Updated February 2025





1. Formation of Agreement

A contract comprising these Terms and an Access Order (or any subsequent customer accepted Quote) will be formed between IntelligenceBank and the Customer upon the Customer providing IntelligenceBank with either the Access Order or Quote signed by the Customer or otherwise indicating its acceptance of the Access Order or Quote in writing, (including in all instances by email) or commencing payment of any Access Fees specified in any Access Order or Quote. These Terms may be updated from time to time. IntelligenceBank will notify the Customer of any changes.

2. Customer responsibilities

The Customer will be responsible for:

2.1 The day-to-day use of the Service;

2.2 Uploading all Customer Data into the Service;

2.3 Ensuring that the use of the Service by the Customer and each of its Authorized Users and the uploading and storage of the Customer Data complies with all applicable laws, regulations, or codes of conduct (including any applicable privacy or data protection laws) and does not infringe the Intellectual Property Rights of any third party;

2.4 The accuracy, quality, integrity and legality of all information and data in any media and form that Customer (or its Authorized Users) inputs into or uses in connection with, or directs IntelligenceBank to input into or use in connection with, the Service and must not make any claim against IntelligenceBank for any Liability arising in that regard; and

2.5 Satisfying itself that the Service is compatible with its own hardware, software, virus scanning and internet and network capabilities. If service-based virus scanning is required, it can be purchased by the Customer as an additional service.

3. Customer Obligations

3.1 Without limiting the other obligations of the Customer under this Agreement, the Customer must, and must ensure that each Authorized User:

- (a) Does not use the Service directly or indirectly for any activity or transmit or upload any information or material (including any Customer Data) unlawfully, or which is obscene, illegal, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces, offends any person, infringes or appears to infringe the Intellectual Property Rights of any person, contravenes or appears to contravene any applicable laws, regulations or codes of conduct or which prevents any other user from using or enjoying the Service.
- (b) Does not use the Service for storing personally sensitive data, such as personal contact information, bank details, credit card details, social security, tax ID or sensitive healthcare records;
- (c) Does not attempt to gain unauthorized access to the Service or use another person's name, registration account, token, or password. The Customer is responsible for all activities that take place within or using the Customer's Account. IntelligenceBank is not liable for any loss or damage arising from any unauthorized use of the Customer's Account;
- (d) Does not tamper with, hinder the operation of or make unauthorized modifications to the Service;
- (e) Does not transmit or upload any virus, bug, trojan horse, harmful codes or other disabling feature to or from the Service;
- (f) Does not remove, disable, modify, attempt to circumvent or break any encryption, decryption, other security device or other software or technological protection measure which is contained in the Service;
- (g) Keeps all passwords, account names, tokens or login identifications required to access the Service secure and confidential and not reveal these to any other person;
- (h) Does not violate any state, local, national or international law in connection with the use of the Service;
- (i) Does not modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the Service;
- (j) Only makes any part of the Service publicly available to the extent expressly permitted by IntelligenceBank; and
- (k) Does not permit any person other than the Authorized Users to use the Service and ensure that those Authorized Users, in using the Software Platform, comply with the terms and conditions of this Agreement as if they were the Customer.

3.2. The Customer is solely responsible for its use, and the use of any Authorized User, of the Service.

3.3 The Customer acknowledges and agrees that the Service is strictly a tool to be used in conjunction with good and reasonable business judgment by competent personnel and must only be used by the Customer for its internal business purposes.

3.4 If using the Service for legal approvals or Rules checking, the Customer acknowledges and agrees that IntelligenceBank has not received and does not provide legal nor regulatory sign-off, advice or opinions upon which Customer or Authorized Users may rely. The Services do not replace the need for a trained compliance or legal professional to check and approve Customer Data prior to publication. IntelligenceBank does not warrant that the Services will identify any or all potential breaches of laws and expressly disclaims any liability whatsoever for any inability or failure of the Services to do so.



4. Account

In submitting a signed Access Order to IntelligenceBank or otherwise indicating its written acceptance of the terms of the Access Order and the contract signatory has the authority to bind on behalf of the Company, the Customer agrees that it has provided true, accurate, current, and complete information about the Customer as requested by the Access Order or otherwise submitted by the Customer.

5. IntelligenceBank Service Specifications

- 5.1 IntelligenceBank shall ensure the Services will materially comply with the Service Specifications outlined in the Access Order or a Quote. Detailed specifications of features corresponding to items purchased by the Customer in an Access Order can be found on help.intelligencebank.com for the IntelligenceBank Service, and support.redmarker.ai for the Red Marker Service.
- 5.2 IntelligenceBank may substitute any component of the Service prior to or during the Term without consultation with the Customer if, in the opinion of IntelligenceBank, such substitution will not cause a material degradation of the core Services or otherwise result in a failure to comply with the Service Specifications.
- 5.3 IntelligenceBank will use reasonable endeavors to provision the Service with mission critical, fully managed by IntelligenceBank, at premium data centers with 24/7, 365 days availability and 99.9% uptime. Servers will be protected by a Firewall. Uptime excludes planned maintenance which will occur outside of “normal business hours” (being 8am-6pm Monday - Friday where data is hosted) and emergency maintenance.
- 5.4 IntelligenceBank uses AWS S3 distributed file system across geographically distinct locations within a specified region for backup. IntelligenceBank uses AWS S3 versioning to provide a backup of files, and customer databases are backed up nightly and stored for 30 days.

6. Availability of the IntelligenceBank Platform

Notwithstanding anything else in this Agreement, the Customer acknowledges and agrees that:

- 6.1 All rights granted to the Customer under this Agreement (including all rights to use the Services) are non-exclusive.
- 6.2 The Service may be temporarily unavailable for maintenance, upgrade, and support purposes. IntelligenceBank will endeavor to notify Main Administrators at least 24 hours prior to a scheduled maintenance which will occur outside of normal business hours.
- 6.3 IntelligenceBank is not responsible for the suspension of or interruption to any access to the Service, due to technical or internet access circumstances beyond its immediate control.
- 6.4 IntelligenceBank may continually develop, release, or install updates, upgrades, patches, bug fixes, new releases, or new versions in respect of the Service (“Updates”). If IntelligenceBank develops or releases any Updates, it may implement such Updates on the Service outside of normal business hours. If the Update is the creation or development of a new module or material feature, IntelligenceBank may decide to only provide that Update if the Customer agrees to pay an additional fee to IntelligenceBank.
- 6.5 IntelligenceBank may upgrade, remove, vary, or change the Service (including any features, functions, and other benefits) at any time to improve functionality and usability of the Service and the Customer acknowledges that IntelligenceBank retains the sole discretion regarding the features, functions and other benefits of the Service.
- 6.6 Notwithstanding the above, IntelligenceBank will, unless otherwise agreed by the Customer, maintain the basic functionality of modules and features of the Service which were accessible by the Customer from commencement of the Term.
- 6.7 IntelligenceBank will address any reported material issues or defects that are submitted to the helpdesk via helpdesk@intelligencebank.com during normal business hours according to the following SLAs. The system will materially comply with features and functionality as listed on help.intelligencebank.com or the IntelligenceBank Service, and support.redmarker.ai for the Red Marker Service.



IntelligenceBank Service Level Agreement (SLA)

SLA Definition	Target Time			
	Initial Response to Customer	Feedback to Customer	Target time: Restore service	Target time: Permanent fix applied
Critical Impact: Where all or any incidents have a major impact to the service and there is no work around	As soon as possible	Every 1 hour or as needed or agreed	4 hours	5 business days
Serious Impact: Includes all or any incidents which have a major impact on delivery of a significant part of the service but the service is not usable and there is a work around	4 hours	Every 4 hour or as needed or agreed	4 hours	10 business days
Local Impact: Includes material incidents which require attention but have no major or pending impact on delivery of services	24 hours	Every 48 hour or as needed or agreed	1 week	4 weeks
Recovery Point Objective (RPO)	24 hours			

7. Access to the IntelligenceBank Service and Provision of the Services

- 7.1** During the Term, IntelligenceBank will provide the Services to the Customer on the terms and conditions of this Agreement.
- 7.2** Once the Customer's Access Order has been processed and the Services have been established, the Customer will be sent a welcome email to set up a password. The Customer may then provide access to the Service to its Authorized Users, up to any limit on the number of Authorized Users prescribed in the Customer's Subscription Level. Access to the Service ends when the Term ends.
- 7.3** If the Customer elects not to renew this Agreement at the end of the Term as provided for in clause 14, IntelligenceBank will disable the Customer's access (and the access of any Authorized Users) to the Service and IntelligenceBank will otherwise cease providing the Services.
- 7.4** The Customer acknowledges that the only support and maintenance services which IntelligenceBank will be required to provide the Customer are those support and maintenance services expressly set out in these Terms or in the Access Order.

8. Authorized Users

- 8.1** The Customer agrees that it must ensure that each Authorized User complies with all the provisions of these Terms and all acts and omissions of an Authorized User will be deemed to be acts and omissions of the Customer for the purpose of these Terms.
- 8.2** For the IntelligenceBank Service, each account comes with a free 'assist' license which may be disabled at any time by the Customer for IntelligenceBank helpdesk staff to assist the Customer's users with troubleshooting. It is the Customer's responsibility to govern access to this account. At all times, this account is tracked by individuals and usage reporting is transparent to the Customer within the usage reporting module. For the Red Marker Service, the Customer may add their Red Marker Customer Success Manager as a free license for assistance with troubleshooting.

9. Intellectual Property

- 9.1** IntelligenceBank acknowledges that the Customer Data remains the property of the Customer. IntelligenceBank shall ensure the Customer Data is, to the extent practicable, signified as the property of the Customer and remain free of any lien, charge, or other encumbrance of a third party.
- 9.2** IntelligenceBank owns all Intellectual Property Rights in and to the Service, the Software, the Rules configuration, and the Platform, including, but not limited to, the look and feel, structure, organization, design, algorithms, templates, data models, logic flow, text, graphics, logos, and screen displays associated therewith (IntelligenceBank IP). IntelligenceBank shall have a royalty-free, worldwide, transferable, and perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, custom developments, feedback, or other information provided by the Customer or any Authorized User relating to the Service.
- 9.3** During the Agreement Term, IntelligenceBank grants the Customer a limited, non-exclusive, and revocable license to use the IntelligenceBank IP throughout the world solely to the extent such use is necessary for the Customer to receive the Services and, unless revoked earlier by IntelligenceBank, the license of IntelligenceBank's IP terminates immediately upon termination or expiry of the Agreement.



9.4 The Customer grants IntelligenceBank a non-exclusive and non-transferable license to use its Customer Data, to the extent necessary to provide and support the Service, and improve the accuracy of the Service, provided that Customer Data is de-identified in a manner that ensures Customer cannot be identified as the author of the Customer Data.

10. Communications

10.1 By creating a paid or trial account with IntelligenceBank, the Customer acknowledges and agrees that IntelligenceBank may use an email or other contact information provided to IntelligenceBank to send the Customer and Authorized Users communications regarding the Services, including updates, newsletters, promotional information, and notices of Service violations. This includes in-app messaging to advise Main Administrators or other Authorized Users of updates.

10.2 If the Customer wishes to no longer receive any promotional material, it should email privacy@intelligencebank.com and request removal from any mailing list. IntelligenceBank adheres to local privacy laws and at no time shares personally identifiable data with third parties. Our privacy policy can be reviewed [here](#), which details how personally identifiable data is processed.

11. Data Security

11.1 IntelligenceBank will take proactive security measures designed to protect the Customer Data. These measures may include the use of reasonable physical, administrative, and technical security techniques and systems designed to prevent unauthorized access, maintain data accuracy, and regular backups of both Customer Data and the IntelligenceBank operating system.

11.2 For the IntelligenceBank Service, customers in the US, Canada, Asia, and Europe are hosted and backed up daily on premium, ISO 27001 and SOC 2 compliant servers in the US, Canada, Australia, and UK regions respectively. For the Red Marker Service, customers in the US, Australia and Europe are hosted and backed up daily on premium, ISO 27001 and SOC 2 compliant servers in the US, Australia, and UK regions respectively.

11.3 The Customer acknowledges that no data transmission over the internet can be guaranteed as totally secure and IntelligenceBank does not warrant and cannot ensure the security of any information transmitted to IntelligenceBank from the Customer over the internet or uploaded to the Service.

11.4 While redundancy and back-up systems will be in place, under no circumstances will IntelligenceBank be held liable for any loss of Customer Data to the extent that Customer Data is being transmitted over the Internet, the Customer acknowledges that IntelligenceBank has no control over the functioning of the internet, and IntelligenceBank makes no representations or warranties of any kind regarding the performance of the Internet.

11.5 If the Customer Data is lost, destroyed, or altered while stored on computer servers or other hardware or systems used by IntelligenceBank without fault on the part of the Customer, IntelligenceBank shall take all reasonable measures to immediately restore the Customer Data within 24 hours.

11.6 Each year, IntelligenceBank undergoes third party penetration tests and an ISAE3402/SOC 2 compliance audit. Topline results can be shared with Customers upon request.

11.7 If you choose to use the Marketing Compliance Advanced AI Rules, these use closed, private AI models (where your data is not used outside of the intended purpose) hosted in the US, Canadian, EU or Australian regions by AWS, Google and/or OpenAI, where your data is hosted, with zero day retention where available. If there are new closed models available not in your data region to address a non typical use case, IntelligenceBank will provide you with hosting options until that model is available in your region. For clarity, closed private models outside of your data geography will not be used without your prior consent.

12. Billing, payment, upgrades, and downgrade

12.1 The Customer agrees to pay IntelligenceBank the Access Fees. IntelligenceBank will issue the Customer with an invoice for the Access Fees payable by the Customer annually in advance in accordance with the terms of payment set out in the Access Order. Unless otherwise specified within the Access Order, Payment Terms are 15 days from invoice date. If Access Start Date is not specified within the Access Order, it will be the Date of Signing.

12.2 Without limiting clause 13, the Access Fees exclude all taxes and other charges such as currency exchange rate or bank transfer fee charges and it is the Customer's responsibility to pay these taxes and additional charges. If the Customer fails to pay any amounts due to IntelligenceBank under this Agreement (including where any payment via a credit card or direct debit facility is declined or otherwise rejected) then, without prejudice to IntelligenceBank's other rights regarding the non-payment:

(a) IntelligenceBank may charge the Customer interest (both before and after any judgment) on the unpaid amount at the rate of 10% per annum, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until IntelligenceBank receives payment of all such amounts (including all interest) by way of cleared funds.

(b) IntelligenceBank may suspend or terminate the Customer's and any Authorized User's access to the IntelligenceBank Platform and provision of the Services.

12.3 For Customers paying by credit card, the Customer must be authorized to use the payment method they enter when creating a billing account. The Customer authorizes IntelligenceBank to charge them for the Access Fees incurred using that payment method and for any paid feature of the Service that the Customer adds to the Service.

12.4 If this Agreement expires, Customer Data will be maintained for at least 30 days, noting that prior to expiration, the Customer may download Customer Data from the Service at any time with no additional fees. Alternatively, the Customer can elect to retrieve a copy of the Customer Data or have IntelligenceBank deliver a copy of the Customer Data to the Customer for a specified fee to be determined depending on the amount of data stored within the Service and delivery charges. Data is returned in the format uploaded into the Service; specifically, the latest versions of files and/or data will be provided in the folder structure provided, and if used, workflow history, and database records in the form of a CSV file.



- 12.5** The Customer acknowledges that the Customer Data may be deleted and may not be recoverable after this 30-day period unless alternate arrangements are made and specified in the current or a subsequent Access Order. The Customer acknowledges that there will be no obligations on IntelligenceBank to retain Customer Data for any period following the expiry or termination of a free trial unless agreed otherwise in writing.
- 12.6** If the Customer chooses to upgrade or increase their Subscription Level to increase the number of Authorized Users, data allowance, modules and/or features of the Service ("Upgrade Access"), any incremental Access Fees associated with the Upgrade Access will be prorated over the remaining period of the Agreement Term, charged to the Customer's Account and due and payable as agreed in the Access Order or Quote. In any future Agreement Term, the Access Fees will reflect the Subscription Level inclusive of the Upgrade Access.
- 12.7** No refunds or credits for Access Fees or other fees or payments will be provided to the Customer if the Customer elects to downgrade or decrease its Subscription Level during the Term to reduce the number of Authorized Users, data allowance, modules and/or features to the Service which are accessible by the Customer. Downgrading the Subscription Level may cause loss of content, features, or capacity of the Service as available to the Customer and IntelligenceBank does not accept any liability for such loss.
- 12.8** If the Customer is signing on for a Multi-Year Access (i.e. more than 12 months), the Customer agrees any discount received is reflective of the Agreement Term as reflected in the Access Order, and during the Multi-Year Agreement Term, the Customer may Upgrade Access at any time, however a minimum spend in line with the Access Order value is required for the Full Term.

13. Tax

- 13.1** Unless otherwise expressly stated in writing in the Agreement, all amounts payable by the Customer in connection with the Agreement do not include an amount for GST, VAT, sales tax or any other tax, levy, duty, charge, impost, fee, deduction, compulsory loan or withholding ("Tax").
- 13.2** If any Tax is payable on any supply made by IntelligenceBank under the Agreement, the Customer must pay to IntelligenceBank, in addition to and at the same time as the payment for the supply, an amount equal to the amount of any Tax on the supply.
- 13.3** Where the Customer is required by the Agreement to reimburse or indemnify IntelligenceBank for any loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that IntelligenceBank will be entitled to claim for the loss or amount incurred and increased by the amount of any Tax payable by IntelligenceBank in respect of the reimbursement or payment.

14. Renewal, Cancellation, and Termination

- 14.1** Either the Customer or IntelligenceBank may elect to terminate this Agreement and the Customer's access to the IntelligenceBank Platform as from the end of the Term by providing no less than thirty (30) days written notice prior to the expiry of the Term. If this Agreement is not terminated in accordance with the above paragraph, the Agreement Term will renew automatically at the end of the Term for a period equivalent to the expiring Term on the same terms of the Agreement, other than the Access Fees which shall be increased by any amount specified in the Access Order or Quote.
- 14.2** Access Fees shall be paid in full for the Term and shall not be prorated should the Agreement be canceled or terminated during the Term for any reason whatsoever. There is no termination for convenience within each Term and any pre-paid or owed Access Fees will not be reimbursed nor credited within the Agreement Term.
- 14.3** If either party is in breach of this Agreement more than 3 times in any month or is in breach without remedy within 30 days, either party may terminate for cause with 30 days' notice. If terminated by the Customer, unused Access Fees or other fees paid in advance to IntelligenceBank will be refunded to the Customer on a pro-rata basis, 30 days from written notice by the Customer. If terminated by IntelligenceBank, refunds will not be provided for the remainder of the term, and all fees agreed in the Access Order are payable within 30 days if payment has not already been received.
- 14.4** Upon termination or expiry of the Agreement taking effect:
- (a) The Customer must immediately cease using and ensure that each Authorized User ceases using the IntelligenceBank Platform;
 - (b) The Customer must immediately pay to IntelligenceBank all Access Fees, expenses or other sums payable to IntelligenceBank under this Agreement which have accrued or are payable as at the date of termination;
 - (c) IntelligenceBank may retain all Access Fees which have been paid by the Customer to IntelligenceBank prior to the termination or expiry of this Agreement (regardless of whether such Access Fees have been paid by the Customer in advance); and
 - (d) IntelligenceBank ceases to have any obligations under this Agreement with respect to the provision of Services and may disconnect the Customer's access to the IntelligenceBank Platform.

15. Third Party Materials and Content

- 15.1** The Service may contain, or be integrated or interfaced with, features, functionality, information, applications, products, systems, or internet sites that are owned or operated by a third party ("Third-Party Materials").
- 15.2** The Customer's use and access of Third-Party Materials and support for such Third-Party Materials must be obtained directly from,



and may be subject to the terms published or otherwise made available by, the third-party providers of the Third Party Materials.

- 15.3 IntelligenceBank makes no representation or warranty regarding any Third-Party Materials or any materials, information or data the Customer uploads or links to ("Customer Materials"), and the Customer irrevocably waives any claim against IntelligenceBank with respect to such Third Party Materials and Customer Materials.
- 15.4 If the Customer opts to use IntelligenceBank's Third Party AI capabilities, which use Microsoft Azure and other systems, including keyword tagging, facial recognition, subject tagging and/or training and other features, the Customer accepts responsibility for terms automatically associated to files uploaded within the IntelligenceBank Platform as well as usage of the system.
- 15.5 If the Customer opts to purchase IntelligenceBank's creative templates capability, the Customer agrees to [Santa Cruz Software' EULA](#).
- 15.6 If purchasing Handshakes, the Customer acknowledges that data is passed through a third-party tool called Zapier, where hosting is located at AWS in the US. Please read the detailed description available [here](#) on our helpdesk prior to purchase.

16. Customer Data and Access

At any time during the Agreement Term, the Customer may:

- 16.1 Download their Customer Data through the Service; or
- 16.2 Request a copy of the Customer Data on hard drive or disc in the format as uploaded in the Service for a fee to be determined by IntelligenceBank at the time the request is made depending on the amount of Customer Data stored within the Service and associated delivery charges.
- 16.3 Provided the Customer is not in default under the Agreement and within an Agreement Term, IntelligenceBank shall ensure that the Customer can obtain access (via the use of a password) to the Customer Data while in the possession or under the control of IntelligenceBank.
- 16.4 IntelligenceBank will use all reasonable endeavors to ensure unauthorized third parties do not gain on-line or physical access to Customer Data without the prior consent in writing of the Customer. This includes the use of encrypted passwords, administered by the Customer.

17. Security of IntelligenceBank Platform

- 17.1 IntelligenceBank will take all reasonable steps to ensure the security of the Service and information stored on IntelligenceBank's computer servers and other hardware or systems, including by implementing and maintaining reasonable and current data protection and virus screening procedures and technologies on its own internal systems; and offering additional single sign on, MFA, virus scanning as options to the Service to Customers.
- 17.2 Provided IntelligenceBank complies with its obligations under this clause, IntelligenceBank will not be liable for any liability, loss or damage suffered by the Customer which arises out of or in connection with
 - (a) any computer viruses being transferred by or obtained as a result of the use of the Services;
 - (b) any hacking into or other similar attacks on the Service's hosting infrastructure or IntelligenceBank's computer servers and other hardware or systems.

18. Access Facilities

- 18.1 The Customer will be responsible for providing and maintaining its own facilities (including hardware, device, web browser, software, internet, and network capabilities) necessary for accessing the Service.
- 18.2 The Service is optimized for the latest versions of modern and supported browsers; Edge, Chrome, Safari and Firefox.

19. Modern Slavery Policies

- 19.1 IntelligenceBank will not engage in any activity that constitutes a breach by IntelligenceBank of the Modern Slavery Act 2018 (Cth) in the performance of obligations under this Agreement and it has investigated its practices and is satisfied that there are no activities that it undertakes which would amount to a breach by IntelligenceBank of the Modern Slavery Act 2018 (Cth).

20. Confidentiality

- 20.1 A Party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information, including the terms of this Agreement, unless required by law or the rules of any relevant securities exchange.
- 20.2 Each Party shall take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.
- 20.3 Notwithstanding any other provision of this clause, the Customer may disclose these Terms (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants and IntelligenceBank may disclose and otherwise use the Confidential Information of the Customer for the purposes of providing the Services.



21. Indemnification

21.1 The Customer must indemnify and keep IntelligenceBank indemnified against any loss, liability or damage which is suffered or incurred by IntelligenceBank, and which arises out of:

- (a) Any failure by the Customer to obtain any consent, authorization, permit or approval required for IntelligenceBank to provide the Services, including rights to use the Service and Customer Data;
- (b) The use of the Service by the Customer or its Authorized Users or the uploading or storage of the Customer Data that does not comply with any applicable laws, regulations, or codes of conduct (including any applicable privacy or data protection laws);
- (c) The Customer infringing the Intellectual Property Rights of a third party (including any Authorized User); or
- (d) Any negligent or unlawful acts of the Customer or any of its related parties or their respective Authorized Users, employees, officers, contractors, or representatives, except to the extent the relevant loss, liability or damage arises as a direct result of any breach of this Agreement.

21.2 IntelligenceBank must indemnify and keep the Customer indemnified against any loss, liability or damage which is suffered or incurred by the Customer, and which arises out of the Service infringing the Intellectual Property Rights of a third party; or any unlawful acts of IntelligenceBank or any of its related parties or their respective employees, officers, contractors, or representatives, except to the extent the relevant loss, liability or damage arises as a direct result of any breach of this Agreement by the Customer or any negligent or unlawful act of the Customer or any of its personnel.

22. Limitation of Liability

22.1 Subject to laws in jurisdictions that do not allow the exclusion or limitation of certain liabilities, each Parties' entire aggregate liability to the other Party for all claims, actions or proceedings over the Term under or related to this agreement will not exceed, for any claims, actions or proceedings brought in respect of any 12-month period, a maximum aggregate amount equal to the total payments made by the Customer to IntelligenceBank under this Agreement over those 12 months.

22.2 Subject to the other provisions in this clause and to the fullest extent permitted by law, neither Party will be liable for any Consequential Loss (however caused) suffered or incurred by the other Party in connection with this Agreement. This clause applies even if the Party knew or ought to have known that the relevant Consequential Loss would be suffered.

22.3 These limitations of liability apply whether such claims arise under contract, tort, (including negligence), equity, statute or otherwise. Nothing in this clause applies to or limits the obligations of the Customer in relation to payment of Access Fees.

23. Insurance

IntelligenceBank will maintain the following minimal insurance policies with a reputable insurer:

- (a) Technology Professional Liability for not less than AUD \$10,000,000
- (b) Privacy and Network Security Liability for not less than AUD \$5,000,000
- (c) Technology Liability for not less than AUD \$20,000,000 Aggregate Limit
- (d) Cyber Enterprise Risk Management for not less than AUD \$1,000,000 Aggregate Limit
- (e) Public liability insurance for not less than AUD \$20,000,000
- (f) Product liability for not less than AUD \$20,000,000
- (g) Commercial General Liability for not less than USD \$1,000,000 in respect of any single occurrence and in aggregate
- (h) Crime for not less than USD \$1,000,000
- (i) Workers Compensation and Employers' Liability in the United States for not less than USD \$1,000,000
- (j) Appropriate Workers' Compensation (WorkCover) insurance in other states and territories where it operates

24. Disclaimer of Warranties

Subject to any rights the Customer may have under any law, IntelligenceBank:

24.1 Provides the Service "as is" "with all faults" and "as available";

24.2 If purchasing a web risk report service, makes no warranty that the Service will be able to access, input or verify all Customer Data published on Websites or any Customer Data at a particular point in time or over a period of time; and

24.3 Makes no warranty that the Service will be uninterrupted or error free.

25. Force Majeure

Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure. If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended until the relevant Party is able to resume its performance of its obligations under the Agreement.



26. Assignment

The benefit of this Agreement shall not be assigned by either Party without the other Party's written consent which is not to be unreasonably withheld and may be given subject to reasonable conditions as a prerequisite to such assignment. For the avoidance of doubt, a change in ownership or control of either party does not amount to an assignment for the purposes of this clause.

27. Waiver

No waiver of any breach of any term of this Agreement (including this sub-clause) shall be effective unless in writing signed by the Party or Parties having the right to enforce such breach and no such waiver shall be construed as a waiver of any subsequent breach.

28. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and no representations, warranties, guarantees or other terms or conditions, whether express or implied and whether oral or in writing in relation to the subject matter of this Agreement shall be of any force or effect unless contained in this Agreement. The terms may be updated from time to time.

29. Variation

Any variation of this Agreement shall be of no force or effect unless confirmed and agreed to in writing between the Parties.

30. Governing Law

This Agreement shall be governed by and construed in accordance with the laws from time to time in force in Victoria (Australia) and the Parties hereto irrevocably submit to the exclusive jurisdiction of the Courts of that State and any Courts competent to hear appeals there from.

31. Severance

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal, it shall be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) shall be severed from this Agreement without thereby affecting the validity, legality of enforceability of the remaining provisions (or parts of those provisions) of this Agreement which shall continue in full force and effect provided that the Agreement as amended following such severance is not substantially different from this Agreement.

32. Definitions

- **"Access Fees"** means the fees paid by the Customer for the Service as specified in this Agreement (including as specified in an Access Order or Quote).
- **"Access Order"** means the access order which has been signed by the Customer or otherwise accepted by the Customer and under which IntelligenceBank offers to provide the Customer with the Services on the terms of the Agreement.
- **"Account"** means the information, settings and details related to the Customer's Subscription Level and access to the IntelligenceBank Platform under the Agreement, including levels of access and billing information.
- **"Agreement"** means the agreement for the provision of the Services to the Customer, comprising these Terms and the Access Order.
- **"Agreement Term"** means the term of the Agreement, being the time period for which access is to be provided to the IntelligenceBank Platform and the Services provided as set out in the Access Order.
- **"Authorized User"** means a person who has been granted access to the IntelligenceBank Platform by the Customer.
- **"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria and in the city, state and country where the customer predominantly operates unless specified otherwise.
- **"Confidential Information"** means any information provided by a Party to the other Party in connection with the Services or this Agreement and in the case of IntelligenceBank, includes the Access Order or any other information regarding the IntelligenceBank or Red Marker Software Platforms, but does not include information which is in or becomes part of the public domain, other than through a breach of this Agreement or of an obligation of confidence, or information which a Party proves was independently acquired or developed without breaching any of the obligations set out in this Agreement.
- **"Consequential Loss"** means:
 - (a) All indirect and consequential loss;
 - (b) All loss beyond the normal measure of damages; and
 - (c) All loss of revenue, loss of data, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, loss of use, cost of capital or costs of substitute goods, facilities or services.
- **"Customer"** means the organization who requested the Services and is named as the customer in the Access Order.
- **"Customer Data"** means information and data owned or supplied by the Customer to which IntelligenceBank is provided access pursuant to this Agreement or data which may otherwise be generated, compiled, arranged or developed within Services in respect of the Customer by either Party pursuant to this Agreement.



- **“Force Majeure”** means a circumstance beyond the reasonable control of a Party, which results in the Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to: acts of God, pandemics, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, cyber hacking denial of service, sabotage and revolution but do not include economic duress or lack of funds.
- **“Improvement”** means any modification, alteration, development, new use or other change to the IntelligenceBank Platform which makes it more accurate, more useful, more functional, more efficient, more cost effective or in any other way preferable.
- **“Intellectual Property Rights”** includes all copyright, trademark, design, patent, semiconductor or circuit layout rights.
- **“IntelligenceBank Platform”** means the dedicated web software platform the Customer can access and use under this Agreement to share and manage information with registered users as further described in the Access Order and which will include the data allowance, modules and features set out in the Access Order.
- **“Main Administrator”** means the Authorized User(s) who have control over configuring the Service and adding other Authorized Users for the Customer.
- **“Party”** means either IntelligenceBank or the Customer as the context dictates.
- **“Quote”** means a pricing quote for any additional Service/s provided by IntelligenceBank to the Customer which, when accepted by the customer, forms a binding addendum to an Access Order.
- **“Rules”** means the compliance rules logic existing in the Service at any time, including the standard rules existing as at the commencement date of the Services and any standard or additional/custom rules added during the term of this Agreement (including as created or developed in connection with any Services), and includes any amendments or updates to the Rules logic.
- **“Service/s”** means:
 - (a) Setting up the IntelligenceBank and/or Red Marker Software Platform for use by the Customer and its Authorized Users, or the IntelligenceBank and/or Red Marker Software.;
 - (b) Providing the Customer and its Authorized Users with access to and use of the IntelligenceBank and/or Red Marker Software Platform during the Agreement Term (subject to the restrictions and with the benefits and restrictions applicable to the Customer’s Subscription Level as set out in the Access Order or agreed between the Parties in writing, including restrictions on the number of Authorized Users who may access the Software Platform).
 - (c) Any other services expressly set out in the Access Order.
- **“Service Specifications”** means the specifications for the IntelligenceBank Platform as set out in this Agreement.
- **“Software Platform”** means either the IntelligenceBank or Red Marker software Service.
- **“Subscription Level”** means the subscription level or type of subscription that the Customer purchases from IntelligenceBank from time to time, as set out in the Access Order or otherwise agreed with IntelligenceBank.
- **“Terms”** means these Terms and Conditions.
- **“Term”** means the term of this agreement as specified in the Access Order.
- **“Website”** means the websites or web domains that Customer has notified to IntelligenceBank for the purpose of website and web domain scanning in connection with the Services (to the extent, if any, the Services include such scanning).
- **“Updates”** means additional features, processes, bug fixes or modules that may be added to the Service.
- **“Upgrade Access”** means additional features, data, users, modules or services the Customer may choose to purchase additionally, on a pro rata basis during an agreement term, or purchase at a renewal.