

1. Agreement

This Service Agreement, the Service Schedule(s) and your Service Order(s) set out the terms and conditions that apply to your access to and use of the Services and form an agreement between IntelliPath New Zealand Limited ('we', 'us' or 'our') and you, the entity entering into this agreement ('you') ('this Agreement').

2. Account

- a. To access the Services, you must create a IntelliGlance account and provide a valid email address.
- b. We may assume that any request in relation to the Services we receive from you, your agents or employees, from the premises where the Service is being supplied or accessed or from your IntelliGlance account is authorised by you. You must tell us in writing immediately if you believe that there has been unauthorised use of your Services or your account or if your account information is lost or stolen.

3. Ordering Services

- a. By submitting a Service Order to us:
 - i. you warrant that the information you provide to us in a Service Order is true and correct and that we may rely upon it; and
 - ii. you are making a binding offer to acquire the Services described in the Service Order. An agreement to supply those Services is formed on (and charges apply from) the Service Commencement Date.
- b. We may be unable to accept your Service Order where:
 - i. you do not meet our credit assessment criteria;
 - ii. we are unable to provide the Service to you for technical reasons;
 - iii. we do not have all necessary third party consents to provision the Service; or
 - iv. you have not provided all the information or documentation we need to provision the Service.

c. We may appoint a dealer or agent to act for us in relation to your Service Order and if we do so, we may pay them a commission.

4. Credit and security

a. When you register with us and from time to time during the term of this Agreement, you authorise us to assess your creditworthiness and to communicate with credit reporting agencies about your credit status. We may give these agencies information that you have provided to us.

b. We may require you to lodge some form of security as a condition of providing Services to you, which we may use to recover amounts you owe us or to compensate us for any Loss we suffer as a result of your breach of this Agreement. We may also set a credit limit or restrict your use of the Services to limit our financial exposure. If you exceed your credit limit, we may restrict your ability to order new Services and/or require payment from you.

5. Services

a. Whenever we agree to provide you with a Service, we will use our reasonable endeavours to begin providing the Service within a reasonable timeframe or by any requested delivery date set out in your Service Order.

b. If the Service Schedule sets out service levels for a Service then we will use our reasonable endeavours to provide that Service in accordance with those service levels. If we fail to meet a service level, your remedy (if any) will be set out in the Service Schedule, and this will be your only remedy in relation to that failure.

c. We may replace or vary an existing Service at any time provided that the variation does not result in any material deterioration in the quality of the Service.

d. We may intercept data that is transmitted using the Service in order to comply with our legal obligations. We may investigate any misuse of the Service by you, including in conjunction with law enforcement agencies.

6. Your responsibilities

a. You will, at your cost:

- i. establish and maintain all cabling at third party sites (including all cross-connects) from the service demarcation point to your own (or any End User's) equipment and comply with any requirements of the third party site provider in relation to that cabling;
 - ii. supply and configure your own (and any End User's) compatible equipment to connect to the Services;
 - iii. follow our reasonable directions when connecting anything to any network and equipment we use to provide the Services and ensure it is installed to our specifications; and
 - iv. ensure that you do not (and your End Users, agents, contractors and third party suppliers do not) damage any equipment, network or sites we use to provide the Services.
- b. When you use a Service, you will:
- i. comply with all applicable laws, regulations and codes of conduct;
 - ii. comply with our Acceptable Use Policy;
 - iii. comply with our reasonable directions concerning your use of the Service;
 - iv. use the Service for business purposes only and not resell or resupply the Service unless we agree in writing;
 - v. use the Service for lawful purposes and without offending, upsetting or being a nuisance to anyone;
 - vi. be responsible for all information and data transmitted or accessed using the Service; and
 - vii. be responsible for any of your agents, employees, contractors or other service providers who have access to the Service.
- c. You are responsible for implementing and maintaining the security of your IntelliGlance account, your devices and network. You must pay all charges in connection with the usage of a Service, even if that usage was not authorised by you, unless that usage was caused by our mistake.

d. You indemnify us and will keep us indemnified for any Loss suffered or incurred by us due to a breach of this Agreement by you. This indemnity is not limited by clause 10 but is reduced to the extent that the Loss is caused by our negligence.

7. End Users

a. This clause 7 applies if we have agreed in writing that you may resell or resupply the Services.

b. You are responsible for ensuring that you have all necessary consents and authorisations to resupply the Services to End Users.

c. You must enter into all contracts with End Users (End User Contracts) on your own account. You must ensure that End User Contracts make no reference to us and that we have no liability to any End User under an End User Contract.

d. You are responsible for handling all customer service, billing and fault enquiries and complaints received from End Users. You are also responsible for billing and collections under End User Contracts.

e. You must ensure that End Users use the Services in accordance with this Agreement, the Acceptable Use Policy and all applicable laws.

f. You indemnify and will keep us indemnified for any Loss suffered or incurred by us in connection with an action or claim brought by you or a third party (including an End User) against us which relates to or arises out of any End User's use of the Services.

g. You must not:

- i. do, or permit to be done, any act that damages our reputation;
- ii. make any representation or give any warranty in relation to the Services that is inconsistent with written materials supplied by us;
- iii. refer to us in any marketing or promotional materials except with our prior written consent; or
- iv. represent expressly or by omission or implication that you are approved by, an agent of, or affiliated with us.

8. Charges and payment

- a. We will charge you fees in accordance with your Service Order. If your Service Order does not set out the fees, we will charge you in accordance with the pricing information set out at www.intellipath.co.nz as at the date of your Service Order.
- b. We issue invoices monthly. We will notify you by email when an invoice is available in your IntelliGlance account. All charges will be invoiced and must be paid in the currency specified on the relevant Service Order.
- c. You may apply for an account with us. If we accept your application, you must arrange to pay all invoices within 30 days of the invoice date using one of the payment methods listed on your invoice. Otherwise, you may register for your charges to be paid as a recurring card transaction (and if we reject your application for an account with us, this is the only payment method available to you). We will determine how payments will be applied against outstanding invoices. Service fees and charges may apply to some payment methods.
- d. If you do not pay an invoice in full by the due date, we may charge you a default fee on the unpaid amount on a daily basis from the due date until payment is made at the rate of 3% per annum above the prevailing base rate charged by our current bank.
- e. If you think there has been a mistake in any invoice, you must notify us within 90 days after the relevant invoice date with full details. We will investigate your claim and suspend our collection processes until the claim has been resolved. If we have made a mistake, we will reimburse you as soon as practicable.
- f. We may vary the charges:
 - i. on 30 days' notice, at any time if we provide a Service to you that does not have a Minimum Term;
 - ii. on 30 days' notice, if we continue to provide a Service to you after the Minimum Term of that Service has expired;

- iii. without notice at any time if there is an increase in the amount that we must pay our suppliers in providing the Service to you.
 - g. If you terminate a Service other than under clause 13(c) before the end of the Minimum Term, then you must pay us an early termination fee. Unless specified otherwise in this Agreement, the early termination fee is calculated as 50% of your average monthly spend (as invoiced in the 3 months immediately prior to termination) or monthly recurring charge (whichever is greater) on the terminated Service, multiplied by the number of months (or part thereof) between the date of termination and the end of the Minimum Term. You agree that the early termination fee is a reasonable estimate of our likely financial loss if any Service is terminated prior to the end of the Minimum Term.
 - h. Unless stated otherwise on a Service Order, all charges for the Services are exclusive of GST. You must pay us an amount equal to any GST payable on the supply of a Service at the same time that the charges for that Service are payable. We will issue a tax invoice to you for the supply of the Service at or before that time.
9. Service Suspension
- a. We may temporarily suspend or restrict a Service:
 - i. if you or your End User fail to comply with our Acceptable Use Policy;
 - ii. if we believe it is necessary to do so to comply with any law or an order of any government or regulatory body;
 - iii. if we believe it is necessary to protect any person, equipment, network or to attend to any emergency; or
 - iv. where there are technical problems with the Service or where we are maintaining or repairing the network.
 - b. If we suspend or restrict a Service, we will only continue to charge you for the Service if the suspension or restriction is due to your failure or the failure of an End User to comply with this Agreement or our Acceptable Use Policy.

10. Liability

- a. To the extent permitted by law, we exclude all statutory or implied conditions or warranties. We do not warrant that the Services will be continuous, error-free or secure. Our liability for non-excludable conditions and warranties is limited (where it can be limited) to:
 - i. supplying the Services again; or
 - ii. paying you the cost of having the Services supplied again.
- b. To the extent permitted by law, each party's total liability in respect of all claims in connection with this Agreement (whether in contract, negligence or any other tort, under any statute or otherwise) will be the sum of the charges paid or payable by you under this Agreement in the 12 month period preceding the date of the event that gave rise to the claim. This limitation of liability does not apply in respect of your indemnity obligations or your obligation to pay charges under this Agreement.
- c. Except for your obligation to pay charges or fees under clause 8, neither party will be liable to the other (under the law of contract, tort, equity or otherwise) for:
 - i. any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential;
 - ii. any loss or corruption of any data, interruption to business, loss of revenue, loss of sale, loss of profits, loss of business or any other economic loss or any loss of goodwill; or
 - iii. any failure to perform this Agreement if that failure is caused by an event which is an Intervening Event.

11. Intellectual Property

- a. This Agreement does not transfer any of our intellectual property to you, or any of your intellectual property to us.
- b. Subject to receiving your prior consent, you agree that we may use your business name and logo (on a non-exclusive, royalty-free basis) in our advertising, on our marketing collateral or on our websites to reference your connection with us.

- c. If any improvements or changes are made by anyone to the Services during the time we are providing the Services, we will own the intellectual property in those improvements or changes.
- d. You indemnify and will keep us indemnified from all Loss incurred or suffered by us arising from any claims or demands against us where such Loss was caused by any infringement or alleged infringement of any person's intellectual property by you (or an End User) when using the Services. This indemnity is not limited by clause 10 but is reduced to the extent that the Loss is caused by our negligence.

12. Information

- a. As part of the registration process, or in connection with providing Services to you, we may collect personal information from you. We will use our best endeavours to handle your personal information in accordance with our privacy policy, which is available at www.intellipath.co.nz/legal. This policy governs the information we collect from you, how we use it and your rights to access it.
- b. You agree that we may collect and disclose your personal information from or to:
 - i. any third party supplier for the purpose of providing the Services;
 - ii. credit providers or credit reporting agencies for the purpose of ongoing credit management of your account;
 - iii. law enforcement agencies to assist them with criminal prosecution or crime prevention activities; or
 - iv. our related entities, shareholders, agents or advisers for reporting, marketing, accounting, audit and service development purposes.
- c. Each party agrees to handle personal information obtained from the other party, and in your case, from an End User, in accordance with applicable privacy laws.

d. If we have issued IP addresses to you in connection with a Service, you agree that on termination of that Service, your right to use those IP addresses also terminates.

13. Term and termination

a. For Services that have a Minimum Term, the Service will continue for the Minimum Term, unless it is terminated earlier in accordance with this Agreement.

b. Except as otherwise provided in this Agreement, if neither you nor we terminate the Service at the end of the Minimum Term, or if no Minimum Term applies, the Service will continue until it is terminated by you using your IntelliGlance account giving 30 days' notice or by us giving 30 days' notice, unless it is terminated earlier in accordance with this Agreement.

c. Either party may terminate:

- i. a Service by notice in writing where the other party has breached an important term of this Agreement as it relates to that Service and has failed to remedy the breach within 30 days of receipt of notice from the non-defaulting party requiring the breach to be remedied; or
- ii. all Services immediately by notice in writing if the other party suffers an Insolvency Event.

d. We may terminate any or all Services on notice to you:

- i. if we reasonably determine that you pose an unacceptable credit risk to us;
- ii. you have breached an important term of this Agreement and, if that breach is capable of remedy, you have failed to remedy that breach within 30 days of receipt of a notice from us requiring you to do so;
- iii. if we reasonably believe we need to do so to comply with any law or any order or request of any government or regulatory body; or
- iv. if we are unable to continue to supply a Service to you for any reason (including due to technical reasons or the termination of any agreement with our suppliers).

- e. If termination of a Service by us under clause 13(c) or (d)(i) or (ii) results in the Service terminating prior to the end of the Minimum Term, you must pay us an early termination fee in accordance with clause 8(f).

14. Changes to this Agreement

- a. We may change the terms of this Agreement at any time where the change will not adversely affect you by giving you notice.
- b. We may change the terms of this Agreement (other than the charges) at any time other than in accordance with clause 14(a) by giving you 14 days' prior notice (Notice Period). If you do not agree with the change, you may terminate any affected Services by giving us notice in writing prior to the expiry of the Notice Period. Any Service terminations must take effect within 14 days after the expiry of the Notice Period. If you take no action during the Notice Period, you will be deemed to have accepted the changes.
- c. We may modify the IntelliPath API, or may transition to a new API at any time but will try to maintain backward compatibility where reasonably practicable. We will notify you if a modification is likely to adversely affect your ability to use the API.

15. Notices

- a. We may provide any notices under this Agreement by:
 - i. posting a notice on your IntelliGlance account; or
 - ii. sending an email to the email address associated with your IntelliGlance account.

Notices will take effect upon posting to your account or upon sending to your email address. You are responsible for keeping your email address current.

- b. Except where this Agreement allows you to terminate Services using your IntelliGlance account, you must provide notices under this Agreement by personal delivery or registered post to IntelliPath Limited, Unit A7, 1 Beresford Square, Auckland, New Zealand.

16. General

- a. You may not transfer your rights and responsibilities under this Agreement unless we agree in writing. Where we reasonably consider there will be no adverse effect on you, we may transfer our rights and responsibilities under this Agreement without your consent and without notice.
- b. This Agreement is governed by the laws of Queensland and you and we agree to submit to the jurisdiction of the courts of Queensland.
- c. If there is any inconsistency between the documents that form this Agreement, the order of precedence will be this Service Agreement, the Service Schedule(s) and then the Service Order(s).

17. Dictionary

- a. Acceptable Use Policy means the acceptable use policy for Australia and New Zealand available at www.intellipath.co.nz/legal.
- b. API means application programming interface.
- c. GST has the meaning given to it in the A New Tax System (Goods and Services Tax) Act (1999) (in Australia), or the Goods and Services Tax Act 1985 (in New Zealand), as applicable.
- d. End User means any person:
 - i. to whom you resupply a Service or allow to re-distribute a Service;
 - ii. that you allow to use a Service; or
 - iii. to whom you supply any products or services that rely on a Service as an input;
- e. Insolvency Event means where an administrator, liquidator, manager and receiver or any other administrator is appointed over the assets or the business of the entity, or the entity enters into any composition or arrangement with its creditors.
- f. Intervening Event means an event or cause which is beyond the reasonable control of the person claiming that an intervening event has occurred including, any acts or omissions of our third party network suppliers, fire, flood, earthquake, elements of

nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

- g. Loss means all losses, damages, liabilities, claims, costs and expenses (including legal fees on a solicitor and client basis).
- h. IntelliPath API means the IntelliPath application programming interface known as the IntelliPath RestfulAPI.
- i. Minimum Term means the minimum contract term for which you will acquire a Service, as set out in your Service Order (and if no Minimum Term is specified in your Service Order, then as set out in the Service Schedule), and which commences on the Service Commencement Date.
- j. Service means the service(s) ordered by you and which we agree to provide to you under this Agreement and includes any Services which you self-provision or which you use via the IntelliPath API.
- k. Service Commencement Date means the date IntelliPath notifies you that that the Service has been configured, or the date on which you first use the Service, if earlier.
- l. Service Order means an order which sets out the Services that you request us to provide that is:
 - i. submitted online using your IntelliGlance account;
 - ii. signed by you and submitted in hard copy ; or
 - iii. submitted or provisioned via the IntelliPath API using your IntelliGlance account.
- m. Service Schedule means a schedule under this Agreement which sets out service specific information, terms and service levels (if any) applicable to a Service.