



TERMS OF USE

This agreement is entered into by and between the IntelliSense.io and the Customer (together, '**the parties**') as set out in any signed and dated Order Form from the Effective Date and shall run co-terminus with that Order Form.

In the event of a conflict between the Enterprise Subscription Agreement and this Terms Of Use, the terms and conditions of the Enterprise Subscription Agreement shall prevail.

1. Definitions

Authorized Users: means individuals who are authorized by Customer to use the Services, who have been supplied with user identifications and passwords by Customer (or by IntelliSense.io at Customer's request)

2. General

- 2.1. These Terms apply to all use of the IntelliSense.io Products.
- 2.2. Customer may request access to the Products by registering the request with IntelliSense.io through the online Helpdesk.
- 2.3. Certification on the products can be gained through the online platform *brains.app* accessing *IntelliSense.io* Academy or can be purchased separately in the Order Form through Training & Certification services.
- 2.4. A user guide and online prompts are available to guide the user from within the online platform *brains.app*.

3. Personal Data

- 3.1. The customer acknowledges that the Products are not intended to collect personal data.
- 3.2. To the extent the Customer Data comprises "personal data" within the meaning of applicable data protection laws and regulations, and in respect of which it is hereby acknowledged that IntelliSense.io is acting as data processor only to:
 - (a) process the personal data in accordance with this Agreement, Customer's written instructions and applicable data protection laws and regulations;
 - (b) take appropriate technical, organizational and security measures against unauthorized access to or unauthorized alteration, disclosure, destruction or loss of Customer Data.

4. Subcontracting and Hosting¹

- 4.1. IntelliSense.io reserves the right to use trained qualified personnel within the Products and Services.
- 4.2. IntelliSense.io reserves the right to embed vetted third-party software within the Products and Services and to provide the services via a secure hosted solution reasonably and commercially appropriate to the Products and Services.
- 4.3. The customer acknowledges that the platform is provided on secure cloud platform environments provided by third parties with PCI DSS Level 1 security controls.

¹ A full list of third party providers and security measures can be obtained on request at contracts@intellisense.io

5. Customer Responsibilities

- 5.1. Customer is responsible for all activities that occur in Authorised User accounts and for each Authorised User's compliance with this Agreement.
- 5.2. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data and shall ensure that all instructions given by it to IntelliSense.io in respect of the Customer Data will be in compliance with applicable legislation; prevent unauthorised access to, or use of, the Products, and notify IntelliSense.io promptly of any such unauthorised access or use; comply with all applicable laws in using the Products and Services, including without limitation all applicable data protection laws and regulations; where the Customer identifies a defect/deficiency in the Products, provide a fault report (known as a 'Customer Issue Report') to IntelliSense.io to enable IntelliSense.io to correct/fix the defects/deficiencies; grant access to IntelliSense.io to operational data relating to the Target Assets and Systems and accommodate site visits; use the Products as a guide only and shall not rely on them in place of the Customer's existing process and control procedures; and ensure that no personal data (as defined in the Data Protection Act 2018) is provided to IntelliSense.io for processing on behalf of the Customer, whether as a result of storage of personal data or otherwise.
- 5.3. Customer shall not: license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Products and Services available to any third party, other than to Authorised Users or as otherwise contemplated by this Agreement; interfere with or disrupt the integrity or performance of the Products or the data contained therein; attempt to gain unauthorized access to the Products or related systems or networks; modify or make derivative works based upon the Products, Services or any content provided by IntelliSense.io; create Internet "links" to the Products or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or reverse engineer or access the Products in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions or graphics of the Products, or (iii) copy any ideas, features, functions or graphics of the Products. Each login provided by IntelliSense.io cannot be shared or used by more than one individual Authorised User but may be reassigned from time to time to new Authorised Users who are replacing former Authorised Users who have terminated employment or otherwise changed job status or function and no longer use the Products.

6. Transmission of Customer Data.

- 6.1. The Products do not transmit Customer Data outside the Products. The Customer acknowledges that if it transmits Customer Data to any other service (e.g. Geological software, Expert System, Mine planning system, Process Control system) or any other application, whether or not using the Products, it does so at its own risk and that the security and validity of the Customer Data is the Customer's sole responsibility.

7. Trademarks

- 7.1. The Customer grants license to use Customer Trademarks in the Product. IntelliSense.io shall not acquire any right, title, or interest in or to, nor have any right to use, any Customer trademark, trade name, service mark, or other proprietary designation of the Customer other than as necessary to provide the Products and Services.

8. Warranties & Disclaimers.

- 8.1. Data Protection:** Customer represents and warrants that the collection and processing of Customer Data by it and/or as contemplated by this Agreement complies in all respects with applicable data protection laws and regulations.
- 8.2.** IntelliSense.io shall not be in breach of any of its obligations hereunder which arise or occur due to the act, omission, and default of Customer or any Authorised User. Except as expressly set out herein, no conditions, warranties, or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose will apply to the IntelliSense.io Applications and the Services or to anything supplied or provided by IntelliSense.io under this Agreement which are all provided on an 'as is' basis. Customer acknowledges that the Products and Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. The customer assumes sole responsibility for the results obtained from the use of the Products and Services and for conclusions drawn from such use.

9. Limitation of Liability.

- 9.1. Liability caused by incorrect Customer Data.** IntelliSense.io shall not be liable for any losses occasioned by incorrect or inaccurate Customer Data.
- 9.2. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY THE CUSTOMER HEREUNDER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.
- 9.3. Exclusion of Consequential and Related Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY MISUSE OR DAMAGES ARISING FROM THE PRODUCT AND SERVICES THAT FORM PART OF THIS AGREEMENT WHETHER INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF CUSTOMER DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE PRODUCTS AND SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.4.** Nothing in this Clause 9 excludes or limits either party's liability for:
- (a) breach of third party intellectual property rights;
 - (b) gross negligence or any willful misconduct;
 - (c) breach of clause Confidentiality.