

# Terms of business

## Introduction

These terms of business (“**Terms**”) apply to all services provided to you by Spktral Limited, a company incorporated in England and Wales with company number: 12194589 whose registered office is situated at 20-22 Wenlock Road, London, N1 7GU (“**Spktral**”, “**we**”, “**us**” or “**our**”). These Terms include certain legal rights and obligations and form an integral part of your contract with us.

If you still have questions after you’ve read our Terms, please get in touch at [legal@spktral.com](mailto:legal@spktral.com) – we are here to help.

Last updated: 12 October 2023

## Definitions and interpretation

*In this section we explain key definitions used in this document and how they are interpreted.*

### 1. Definitions

“**Applications**” means our digital services provided to you.

“**Compliant Information**” means summary information which allows you to fully comply with any pay gap reporting obligations in accordance with *The Equality Act 2010*<sup>1</sup> and any other UK statutory instrument enacted for this purpose.

“**Cycle**” encapsulates the work required to produce the Compliant Information and/or analysis for a Client. Each Cycle will have an invoice raised against it.

“**Engagement**” means the provision of Services and access to the Applications to you by us under these Terms and the engagement letter.

“**Engagement Manager**” means the person nominated by each party to the engagement letter who will be the main point of contact for the Engagement, who has authority to view the raw data files to be uploaded into the portal, and who may nominate Invited Users.

“**Invited User**” means the people invited to use the Applications or Services by the Engagement Manager who are at all times bound by these terms.

“**Services**” means the services you contract with us to provide now or in the future as set out in detail in your engagement letter.

“**you**”, “**your**”, or “**Client**” means the Engagement Manager, Invited Users or the entity or firm you’re authorised to represent, as appropriate.

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<sup>1</sup> Specifically, UK Statutory Instrument 172: [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#).

## 2. Interpretation

Words like 'include' and 'including' are not words of limitation and where anything is within our discretion, we mean our sole discretion.

## Pricing, invoicing and payment

*This section details how we price and invoice our services and our terms of payment.*

3. **Pricing:** Our pricing is based on the Services we are providing and is subject to VAT or other sales taxes where appropriate. In addition to the price quoted, we will also charge for any expenses or disbursements incurred in carrying out the Engagement that have been pre-approved by you in writing. We will not undertake any work additional to that set out in the engagement letter without your specific written consent. In the event that additional work is instructed, the price for this will be agreed separately in writing.
4. **Invoicing:** It is our standard practice to raise an invoice for the Engagement as soon as the engagement letter has been signed. Expenses, disbursements and any additional work undertaken will be invoiced on completion of the Engagement.
5. **Payment terms:** We require 100% of the Engagement fee for the first Cycle to be paid prior to starting the Engagement. An invoice for any previously agreed expenses, disbursements and costs of additional work, will be raised on completion of the Engagement and is due for payment on presentation.
6. **Late payment:** We reserve the right to charge interest on late paid invoices at the rate of 5% per annum above the Bank of England bank base rate (or 5% per annum where the base rate is below 0%) under the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to suspend our Services and access to the Applications if payment of any invoice is unduly delayed. We will exercise these rights only where it is fair and reasonable for us to do so.

## Your rights and responsibilities

*This section sets out your rights and responsibilities with respect to the information and data you provide during the engagement.*

7. **The right to use our applications and services:** Whether you're an Engagement Manager or an Invited User, we grant you a non-exclusive, non-transferable, royalty free licence to use our Applications and Services (based on the nature of the Engagement, your user role and the level of access you've been granted) for the term of the Engagement or until the Engagement is terminated or, if you're an Invited User, until your access is revoked.
8. **Rules:** Whatever your role, when you use our Applications and Services you agree to follow the rules set out in these Terms. Please read these and make sure you understand them.

9. **Access Permissions:** You should understand the consequences in granting access to Invited Users. It is your responsibility to ensure that Invited Users are allowed to access and view the data you have in our Applications. Data viewed by Invited Users is not personally identifiable information, but by grouping and filtering the data an Invited User can isolate a specific employee if enough datapoints were held relating (without limitation) to the employee's race, nationality, role, or position. However, Invited Users cannot see any specific elements of pay/bonus attributed to this employee.
10. **Information and data:** You promise that you'll keep your Client and Engagement Manager information (including a current email address) up to date. The Engagement Manager and all Invited Users are responsible for protecting their usernames and passwords from theft or misuse. Our Applications have two-factor authentication and minimum password standards which you must meet.
11. **Data:** You're responsible for providing true, accurate and complete (to the best of your knowledge) data in accordance with any specific data template used during the Engagement. If the Engagement requires us to validate your data, you agree to provide us with any requested validations. We will not be responsible for any consequences which may arise from the provision of incorrect or inaccurate data.
12. **Provision of information:** The price agreed with you is based on the assumption that the information required for the Engagement is made available to us in accordance with any agreed timetable. Where input is required from you, this should be provided within 48 hours (excluding weekends and public holidays). If delays or other unanticipated problems which are beyond our control occur, this may result in us being unable to complete the Engagement within the agreed timeframe and we won't be liable to you for any delay.

## Data use and privacy

*Spktral uses your data to provide our Services to you. Our privacy policy is an important part of these terms and describes in more detail how we deal with personal and organisational data.*

13. **Use of data:** When you enter or upload data into our Applications, we don't own that data, but you grant us a non-exclusive, royalty-free licence to use, copy, transmit, store, analyse, and back up all data you submit to us.
14. **Use of personal information:** We respect privacy and take data protection seriously. In addition to these Terms, our [privacy policy \(contained on our website\)](#) sets out how we process personal data provided to us, like names and email addresses, and it is a term

of the Engagement between us that we will comply strictly with it in processing your personal data. We only use this information to enable use of our Applications, to allow us to improve, develop and protect our Services and Applications, create new applications and services; send communications about the Engagement and send information we think may be of interest based on your marketing preferences.

15. **Use of personal data you enter about others:** Depending on where your contacts are based, our [data processing addendum \(contained on our website\)](#), which complies with Article 28.3 of the EU law retained version of the General Data Protection Regulation ((EU) (2016/679) (“**UK GDPR**”), may also apply to the personal data of others (such as your employees, workers or contractors).
16. **Anonymised statistical data:** When you use our Applications, we create anonymised statistical data from your data and usage of our Applications, including through aggregation. Once anonymised, we may use this data for our own purposes, such as to provide and improve our Applications and Services, to develop new applications and services or products, to identify business trends, and for such other uses as we may communicate to you.
17. **Data breach notifications:** Where we think there has been unauthorised access to personal data inside your area of our Applications, we’ll let you know as soon as reasonably practicable after we become aware of it and give you information about what has happened and assistance in connection with it. Depending on the nature of the unauthorised access, and the location of your affected contacts, you may be required to assess whether the unauthorised access must be reported to the contact and/or a relevant authority. We think you're best placed to make this decision, because you’ll have the most knowledge about the personal data stored in our Applications. We are registered with the Information Commissioner’s Office to process your data under registration number: ZA571108.

## Confidential information

*We take reasonable precautions to protect your confidential information and expect that you'll do the same for ours.*

18. **Strictly confidential:** While using our Applications and Services, you may share confidential information with us, and you may become aware of confidential information about us. You and we both agree to protect the other party’s confidential information from being accessed by unauthorised individuals. You or we may share each other’s confidential information with legal or regulatory authorities if required to do so. This Clause 18 shall survive termination of these Terms.

## Security

*We take security seriously, we regularly perform security audits, and you should too!*

19. **Security safeguards:** We've invested in technical, physical and administrative safeguards to do our part to help keep your data safe and secure. While we've taken steps to help protect your data, no method of electronic storage is completely secure, and we cannot guarantee absolute security. We will notify the Engagement Manager as soon as reasonably practicable if there appears to be unauthorised access to your data and assist you in connection therewith, and we may also restrict access to certain functions (such as data deletion or export) of our Applications until you verify that access was by an Invited User.
20. **Data security features:** We may introduce security features to make your data more secure, such as two-step authentication. Depending on where you are in the world or what Applications you're using, we may require you to adopt some of these features. Where we make the use of security features optional, you're responsible (meaning we're not liable) for any consequences of not using those features. We strongly encourage you to use all optional security features as we implement them.
21. **Your role in keeping your data secure:** You have an important part to play by keeping your login details secure, not letting any other person use them and by making sure you have strong security on your own systems. If you realise there's been any unauthorised use of your password or any breach of security, such as unauthorised access to any email address linked to the Engagement, systems or Applications to store personal data, (unless it's a field explicitly asking for personal data) you need to let us know immediately. You also agree not to use free-form fields in any of our Applications or templates to record personal information – like an employee's first or last name.

## Intellectual property

*This paragraph describes what intellectual property we own and how you can use it and our rights to use your logo.*

22. **Our rights:** We retain all copyright, trademarks and other intellectual property rights in our Applications and in everything utilised and delivered either before or during the course of an Engagement including our systems, methodologies, software and know-how. We also retain all copyright and other intellectual property rights in all Compliant Information, written analysis or other materials provided by us to you, although you will irrevocably and perpetually have the full right to use this Compliant Information, written analysis or other materials within your own organisation and to provide any Compliant Information to the appropriate authorities. If you wish to make use of this Compliant Information, written analysis or other materials outside your own organisation, this will require our prior written permission. You agree not to copy, distribute, modify or make derivative works of any of our content or use any of our intellectual property rights in any way not expressly permitted by us or by

law. It is a condition of these Terms that you consent to us citing you as a client and reproducing your logo on our website, in full compliance of your branding guidelines, and in our trust centre (trust.spktral.com). This will only imply that you trust us with your data (i.e. we have passed your supplier onboarding process), not that you endorse our Services. We will not imply your endorsement of our Services unless you have separately agreed in writing to us using any feedback or testimonial you may give from time to time.

23. We provide you with access to the Applications on the basis of a non-exclusive, non-transferable, royalty-free licence. Nothing in these Terms shall transfer any of your intellectual property rights, including in your branding and content, to us.
24. We warrant and represent that we have obtained any and all necessary licences, sub-licences and other relevant consents or permissions required in order to make the Applications available to you and to comply with our obligations under these Terms.

## Maintenance, downtime and data loss

*We mitigate any downtime by performing key updates throughout the night and at times of very low user activity, but sometimes it's necessary to perform these at busier times so we can keep our services updated and secure.*

25. **Maintenance and upgrades:** We are responsible for all maintenance and upgrades to the Applications which may from time to time be required.
26. **Availability:** We strive to maintain the availability of our services, without interruption, 24 hours a day, 7 days a week, 365 days a year, although you acknowledge and understand that this may not always be possible and is often reliant on factors that are outside our control. We provide email support during business hours. On occasion, we may need to perform essential maintenance on our applications, and this may require a period of downtime. We try to minimise any such downtime. Where planned maintenance is being undertaken, we'll notify you in advance.
27. **Business hours:** Our normal working hours are 9-5pm UK local time, Monday-Friday (excluding standard holidays for England and Wales).
28. **Access issues:** Occasionally you might not be able to access our Applications and your data due to internet connectivity issues beyond our control. This might happen for any number of reasons, at any time.
29. **Data loss:** Data loss is an unavoidable risk when using any technology, but we strive for perfection. Ultimately, you're responsible for maintaining copies of the data entered into our Applications. You are also responsible for ensuring that the data upload is accurate, valid and up to date. We do not verify any of the data you provide.
30. **No compensation:** Whatever the cause of any downtime, access issues or data loss, your only recourse (in the absence of negligence, fraud or wilful default by us) is to discontinue using our Services.

31. **Problems and support:** If you have a problem, we can help you with most situations. If you've tried following our guide, have checked our [knowledge base \(on our website\)](#) and still need help, you can contact us at [support@spktral.com](mailto:support@spktral.com) or by phoning 0131 610 0360 during business hours (as stated at Clause 27).
32. **Modifications:** We frequently release new updates, modifications and enhancements to our Applications, and in some cases modify or discontinue features. Where this occurs, we'll endeavour to notify you by email or on our blog or from within our Applications when you log in.

## Do's and don'ts

*This section is **very** important because it outlines how you can (and can't) use our applications.*

33. **Feedback:** We need your feedback and may use it without restriction to improve and our Applications and Services.
34. **Help using our Applications:** We provide a lot of guidance and support to help you use our Applications. You agree to use our Applications only for lawful business purposes and in line with the instructions and guidance we provide. You cannot use our Applications to provide third party services to organisations which are not party to your engagement letter.
35. **No-charge or beta services:** Occasionally we may offer a service at no charge – for example a beta service, or a time-limited trial account. We will always explain beforehand if there is any risk associated with the use of these services.
36. **The Don'ts:** While we can't cover everything here, we do want to highlight a few more examples of things you must never do:
  - Undermine the security or integrity of our computing systems or networks.
  - Use our Applications in any way that might impair functionality or interfere with other people's use.
  - Access any system without permission.
  - Introduce or upload anything to our Applications that to your knowledge includes viruses or other malicious code.
  - Share anything that is offensive, violates any law, or infringes on the rights of others.
  - Modify, copy, adapt, reproduce, disassemble, decompile, reverse engineer or extract the source code of any part of our Applications.
  - Resell, lease or provide our Applications in any way not expressly permitted by us in writing.



- Repackage, resell, or sublicense any leads or data accessed through our Applications.
- Commit (or attempt to commit) fraud or other illegal acts through our Applications.
- Act in a manner that is abusive or disrespectful to our employees, partners, associates or our other customers and clients. We will not tolerate any abuse or bullying of our employees in any situation and that includes interaction with our support teams.

## Liability

*This section is important as it outlines liability terms between us, so we urge you to read it closely and in full.*

37. **Limitation of liability:** Other than liability that we can't exclude or limit by law, our liability to you in connection with the Engagement or these Terms, in contract, tort (including negligence) or otherwise, is limited as follows:
- We have no liability arising from your use of our Applications and Services for any loss of revenue or profit, loss of goodwill, loss of customers, loss of capital, loss of anticipated savings, loss of data, legal expenses other than arising from our negligent actions, tax or accounting compliance issues, damage to reputation, loss in connection with any other contract, or indirect, consequential, incidental, punitive, exemplary or special loss, damage or expense.
  - Our total aggregate liability to you in any circumstances is limited to the total amount you paid us for the Engagement in relation to the Cycle which gave rise to the liability.

## Disputes

*This section outlines how disputes may be resolved.*

38. **Dispute resolution:** Most of your concerns can be resolved quickly and to everyone's satisfaction by contacting us at [legal@spktral.com](mailto:legal@spktral.com). If we're unable to resolve your complaint to your satisfaction (or if we haven't been able to resolve a dispute, we have with you after attempting to do so informally), you and we agree to resort to mediation before proceeding to formal legal action. You and we agree that any dispute must be brought in the parties' individual capacity and not as a claimant or class member in any purported class or representative proceeding.



## Important housekeeping

*Here we set out some additional terms. Take a read as they cover important issues.*

39. **No professional advice:** We aren't a professional services firm of any sort and cannot give specific professional advice of any kind (such as specific guidance in the interpretation of current and future legislation). We may provide you with information we think might be useful, but this should not be seen as a substitute for professional advice, and we aren't liable for your use of the information in that way. However, we can provide access to our preferred employment law specialists who can, under specific instruction and usually on a fee basis, provide you with answers you may need. Whether you choose to engage any specialist we refer you to, this is without any liability or responsibility whatsoever and you must do your own research. Please speak to your account manager about this key service.
40. **Force majeure:** We do our best to control the environment we operate in. However, we aren't liable to you for any failure or delay in performance of any of our obligations under these Terms arising out of any event or circumstance beyond our reasonable control, including but not limited to power failure, internet company failure, industrial action, civil unrest, theft, fire, flood, storms, earthquakes, acts of terrorism, acts of war or governmental action or direction (a "force majeure event"). If a force majeure event occurs, we will inform you as soon as we are aware of it and we will do what we reasonably can to manage the situation. If such circumstances are likely to result in us being able to deliver our Services in the timeframe set out in the engagement letter and if we cannot agree a modified timeline, you are entitled to terminate the Engagement.
41. **Notices:** Any notice you send to us must be sent to [legalnotice@spktral.com](mailto:legalnotice@spktral.com). Any notices we send to you will be sent to the Engagement Manager by email. All notices are deemed delivered at the time of transmission. This shall not apply to the service of legal proceedings.
42. **Relationship between the parties and assignment:** Nothing in these Terms is to be construed as constituting a partnership, joint venture, employment or agency relationship between you and us, or between us and any Engagement Manager or Invited User. We may assign an Engagement and any of our rights or obligations to another Spktral Entity as we deem appropriate with your written consent. A "**Spktral Entity**" is any company controlled by or under common control of Spktral Limited.
43. **Enforcement of these Terms:** If there's any part of these Terms that either one of us is unable to enforce, we'll ignore that part but everything else will remain enforceable.

## Termination

*This section sets out how either party can terminate the engagement and what happens on and after termination.*

44. **Engagement period:** Unless otherwise agreed our work will begin as soon as we receive a signed copy of your engagement letter and you have settled the invoice, we have sent you. The Engagement will terminate when all Services set out in the engagement letter have been completed.
45. **Early termination:** Each of us may terminate the Engagement at any time by providing no less than one months; written notice. We may also terminate or suspend the Engagement if:
- you breach any part of these Terms and do not remedy the breach within 14 days after receiving written notice from us of the breach; or
  - you breach any part of these Terms and the breach cannot be remedied; or
  - you fail to pay invoices in accordance with our payment terms in these Terms; or
  - your business becomes insolvent, goes into liquidation, has an administrator appointed, makes an arrangement with your creditors or becomes subject to any similar insolvency event in any jurisdiction.

You may also terminate or suspend the engagement if:

- we materially breach these Terms and do not remedy the breach within 14 days after receiving written notice of the breach; or
  - we materially breach these Terms and the breach cannot be remedied; or
  - our business becomes insolvent, goes into liquidation, has an administrator appointed, makes an arrangement with our creditors or becomes subject to any similar insolvency event in any jurisdiction.
46. **No refunds to you:** No refund is due to you if you terminate the Engagement or if we terminates it in accordance with the terms in Clause 45.
47. **Refund of multi-Cycle discount:** If you terminate a multi-Cycle engagement before the end of the Engagement or if we terminate it in accordance with Clause 45, then you may be liable to reimburse us any multi-Cycle discounts that you have received on any settled invoices. This will be clearly shown on invoices as '*multi-Cycle discount*'.
48. **Retention of your data:** Once an Engagement is terminated, your data is archived, and any data submitted and/or created is no longer available to you. We will retain it for a period of time consistent with our data retention policy. If you wish to retain your data, you must ensure you have retained a copy before ending the Engagement. The only data that we will retain will be anonymised, aggregated data that informs our benchmarking algorithms.

## Governing Law and Jurisdiction

*This section explains which laws and which courts apply to both you and us.*

49. **Governing law and jurisdiction:** Our engagement letter, the Engagement and these Terms, and any non-contractual obligations arising hereunder, are governed by and should be construed in accordance with English law. Subject to dispute resolution under Clause 38, each party agrees that the courts of England and Wales will have exclusive jurisdiction in relation to any claim, dispute or difference concerning any engagement letter, the Engagement and these Terms. Each party irrevocably waives any right to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.