



ISC Software

**Terms & Conditions
for Provision of
Solution Implementation**

For

Customers

TCSI1 Issue 4

ISC Software Solutions Ltd

THESE TERMS AND CONDITIONS apply to the provision of Solution Implementation by ISC in respect of the Customer's software

1. **Definitions**

In these Terms and Conditions the following expressions mean:-

"ISC"	ISC Software Solutions Ltd as identified on the Order Acknowledgement or sales invoice.
"the Customer"	the company whose order for the implementation, development or customisation of software is accepted by ISC on an Order Acknowledgement and whose details are defined in Schedule 2.
"Order Acknowledgement"	the order acknowledgement form of ISC containing a summary of the Customer order and other terms on which ISC will implement, develop or customise Software for the Customer.
"the Equipment"	the computer equipment onto which ISC is to install the software as specified in the Order Acknowledgement.
"the Software Authors"	the organisation that created and develops the core software which ISC implements or customises. (e.g. Microsoft).
"the Base Software"	the core standard computer programs developed by the Software Authors on which ISC is to carry out its customisation or development work on pursuant to clause 2 and as specified in the Specification.
"the Custom Software"	the customised Customer specific entity structure, naming conventions and look & feel that ISC is to configure in relation to the Base Software as per the Specification contained in the Order Acknowledgement.
"the Bespoke Software"	the software consisting of ISC developed programs as defined within the Specification.
"the Specification"	the specification of the Bespoke or Custom Software contained or made reference to in the agreed Project Plan and the Order Acknowledgement.
"the Price"	the price for the services to be provided by ISC to the Customer, as specified in the Order Acknowledgement.
"the Software"	means the Base Software, Bespoke Software and the Custom Software together as a functional whole.
"the Project Plan"	means the plan for the delivery, implementation, development or customisation of the Software as refined and agreed with the Customer from time to time and as appended to these Conditions.
"a Phase"	means, as specified in these Conditions, one of the phases for the delivery of the Software as more particularly described in the Project Plan.
"the Deliverables"	The deliverables of the Software are those key elements of Software functionality that specifically enable the acceptance criteria to be achieved.
"the Installation Date"	the installation date as specified in the agreed Project Plan.
"the Acceptance Date"	the date on which the software is accepted (or deemed to be accepted) by the Customer, pursuant to clause 8.
"Ready for Use"	fully installed, complying materially with the Specification and ready for the addition of Customer data.
"the Completion Date"	the date specified in the agreed Project Plan by which ISC is to provide the Software Ready for Use.
"these Conditions"	the terms and conditions set out in this document, subject to any special terms and conditions agreed in writing between ISC and the Customer.
"UAT"	the agreed user acceptance tests to be carried out by the Customer following delivery of each Phase.
"Working Days"	this is taken to be Monday to Friday excluding English Public Holidays unless defined otherwise in Schedule 2.

2. Products and services to be provided

(1) ISC hereby agrees to:-

- (a) implement, configure or develop upon the Base Software to provide facilities and functions as set out in the Project Brief and Project Scope Documents;
- (b) install the Software on the Equipment;
- (c) provide the Software Ready for Use by the Completion Date;

upon these Conditions

3. Charges and payment

(1) In consideration of the Services the Customer shall pay the Charges. All payments shall be made in the manner specified in Schedule 2

(2) Unless otherwise agreed in writing in Schedule 2 of this agreement the Price shall be invoiced by ISC as follows:-

- (a) The Base Software upon delivery.
- (b) Implementation for all Phases:
 - (i) 40% of the Price upon commencement of the first Phase as per Schedule 1;
 - (ii) 30% of the Price upon delivery of the solution as per Schedule 1 into a UAT environment; and
 - (iii) 20% of the Price upon satisfactory completion of UAT for the Upgraded Solution as per Schedule 1; and
 - (iv) 10% of the Price on Go-live of the Upgraded Solution as per Schedule 1.
- (c) The Price and any agreed additional charges payable under these Conditions are exclusive of Value Added Tax.
- (d) Any ISC Invoice generated under the terms of this agreement shall be due for payment no later than 15 days from the Invoice Date of the relevant Invoice
- (e) Billing will be at the date where the above fulfilment criteria are met rather than at any specific date indicated at the outset.
- (f) Confirmation of Completion of a particular Stage or Task will be by mutual agreement of the Customer and ISC.

(3) Without prejudice to ISC 's other rights and remedies if any sum payable by the Customer and not subject to a bona fide dispute is not paid by the due date of the relevant invoice then ISC may by written notice to the Customer suspend ISC 's obligation to provide any Services until such sum is paid. Any such suspension shall be without prejudice to the continued accrual of the charges during the Term

4. Duration

These Conditions shall commence on the acceptance of the Customer Order and shall continue until the Completion Date subject to earlier termination as provided elsewhere in these Conditions

5. Information and access

- (1) The Customer undertakes to provide ISC promptly with any information which ISC may reasonably require from time to time to enable ISC to perform uninterruptedly its obligations to the Customer
- (2) The Customer shall afford to the authorised personnel of ISC during normal working hours, reasonable full and safe access to the Location and shall provide adequate free working space, computer facilities and other office facilities as may be necessary to enable ISC to perform its obligations to the Customer

6. Delivery and Installation of the Software

- (1) ISC shall deliver the Software to the Customer, configure the Custom Software and install the Software on the Equipment by no later than one month after the Installation Date unless a revised Installation Date has been agreed. The installation of the Custom Software will take place in accordance with the Phases and timescales described in the Project Plan

7. Data Migration into the Software

- (1) If it is within the scope of the agreed Project Plan, ISC will provide reasonable assistance with the migration of relevant Customer data into the Software
- (2) In line with 7.(1) above, the Customer shall make available to ISC such extracts of their data as are to be migrated into the Software and which are cleansed to the standard necessary for reliable operation within the Software. The Customer recognises that responsibility for the quality of the data provided and the subsequent checking of data integrity and quality rests solely with them. The migration of any data into the Software will take place in accordance with the Phases and timescales described in the Project Plan

8. Acceptance

- (1) Following signature of these Conditions, the Customer will agree the user acceptance criteria with ISC and draft test scripts for the acceptance tests for the Software. ISC shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test scripts at the Customer's request. These criteria and scripts shall be such as is reasonably required to show that the Software materially complies with the Specification. Prior to the delivery of each Phase, the Customer shall deliver to ISC the proposed user acceptance criteria and test scripts for the acceptance tests for the Deliverables of the Software supplied during that Phase. The parties shall use all reasonable endeavours to agree these acceptance tests within 10 [ten] working days from the date of delivery to ISC of the proposed criteria and scripts
- (2) Within 10 [ten] working days of the date of installation of each Phase, the acceptance tests shall be carried out by the Customer. The acceptance tests shall be started as soon as reasonably possible after installation and shall be run continuously during normal working hours. The Customer shall give ISC at least 24 hours' notice of the start of the acceptance tests and will permit ISC to observe all or any part of the testing
- (3) If any of the Deliverables in any Phase fail to pass the acceptance tests, the Customer shall within 5 [five] working days from the completion of the acceptance tests or any part of these tests provide ISC with written notice to this effect, giving details of such failure(s). ISC shall remedy the defects and deficiencies or in the case of defects in the Base Software seek to obtain a remedy from the original Software Author and the relevant test(s) shall be repeated within 15 [fifteen] working days unless agreed otherwise
- (4) If any of such Deliverables fail to pass any repeated acceptance tests within 4 [four] weeks from the date of their second submission to the acceptance tests, then the Customer may, by written notice to ISC, choose at its sole discretion:
 - (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on such deliverables on the same terms and conditions. If the deliverables fail such further tests then the Customer shall be entitled to request a repeat test under the provisions of this paragraph a or to proceed under clause 8.(4)(b) or clause 8.(4)(c); or
 - (b) to accept the failing Deliverables subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - (c) if ISC is unable to correct Deliverable defects in Bespoke Software or Custom software within a period of 3 [three] months from the commencement of the acceptance tests under clause 8. (2), to reject the Deliverables as not being in conformity with these Conditions, in which event the Customer may terminate these Conditions with immediate effect and seek a full refund of the Price already paid for each specific defective Custom Software or Bespoke Software Deliverable
- (5) The Acceptance Date for the deliverables shall be the date the Customer signs an acceptance certificate for the final Phase of Software

9. Customer's Default

- (1) If ISC is prevented or delayed from performing its obligations by reason of any act or omission of the Customer, then the Customer will pay to ISC all reasonable direct costs, charges and losses sustained or incurred by ISC as a result. ISC shall promptly notify the Customer in writing of any claim which it may have under this sub-clause giving such particulars thereof as it is then able to provide

10. Proprietary Rights

- (1) The copyright and all other intellectual property rights of whatever nature in the Base Software, the Bespoke Software and the Custom Software delivered pursuant to Clause 1 shall be and remain vested in ISC or the original Software Author unless otherwise defined in Schedule 2
- (2) The copyright and all other intellectual property rights of whatever nature in the Operating Manuals, the Technical Specification, Source Code and in all other specifications and documentation or other materials relating to the Software including any copy Source Code delivered pursuant to clause 1 (all such items referred to in this clause 10. (2) being the "Materials") shall be and remain vested in ISC or the original Software Author unless otherwise defined in Schedule 2
- (3) By written agreement prior to ordering of the work by the Customer, copyright and intellectual property rights in any bespoke configuration or coding of the Bespoke Software or the Custom Software configured by ISC specifically for the Customer which are particular to the Customer's specific data structure, naming conventions and look & feel subsisting in the Bespoke Software or Custom Software, shall vest in the Customer as defined in Schedule 2
- (4) To the extent necessary ISC hereby assigns (including, without limitation, by way of future copyright) all right, title and interest in these intellectual property rights determined by clause 10. (3) to the Customer. ISC shall, upon request, do all acts and things necessary (including without limitation executing and/or procuring the execution of any required documents), to give effect to the intent of this clause 10. (4)
- (5) Unless otherwise stated in Schedule 2, ISC hereby grants to the Customer with effect from the Installation date a non-exclusive and non-transferable licence to copy and use the Bespoke Software, Custom Software and the Materials for the Customer's own internal business purposes but for no other purpose. The Customer shall not be entitled to sub-licence, assign or otherwise re-sell the use of the whole or any part of the Materials
- (6) The Customer shall at all times treat as confidential and keep secret according to Clause 11 all information embodied in the Materials of this agreement and shall ensure that the Customer's employees, affiliates and third parties contracting with the Customer to use the Materials subject to this contract, comply with this clause.
- (7) The Customer will indemnify ISC and keep ISC fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising of or in connection with any claim that use by ISC of any information or material supplied by the Customer to enable ISC to write the Software and/or the Operating Manual and/or the Specification infringes the intellectual property rights (of whatever nature)

of any third party or the obligations of the Customer with respect to or rights of any supplier of the equipment or any other programs with which the software will be used

- (8) ISC will indemnify the Customer, and keep the Customer fully and effectively indemnified against all direct costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that use by the Customer of the Custom Software, Bespoke Software and Materials infringes the intellectual property rights (of whatever nature) of any third party

11. Confidentiality

- (1) Each party shall treat as confidential all information obtained from the other pursuant to these Conditions and shall not divulge such information to any person (except to such party's own employees or sub-contractors and then only to those employees or sub-contractors who need to know the same), without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to these Conditions which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If ISC shall appoint any sub-contractor subject to Clause 14 then ISC may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Customer an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of these Conditions
- (2) The Customer may disclose such confidential information to a Third Party as is necessary solely for the purposes of its own internal development but the Customer remains responsible for taking all necessary measures to ensure that the confidential information remains confidential to ISC and the Customer and that such confidential information is not acquired by such Third Party for its own commercial purposes

12. Data protection

Both parties will at all times comply with the relevant provisions of the Data Protection Act 1998 (or any subsequent amendment of said Act) and any subordinate legislation made under such Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. Should either party fail in its obligation it shall indemnify the other party against all or any direct damages losses claims costs and expenses sustained or incurred in connection with any prosecution of that party under the said Act or any civil action brought by any person or persons under the said Act

13. Termination

- (1) Notwithstanding anything else contained herein these Conditions may be terminated:-
 - (a) by the Customer by giving not less than one month's notice in writing; or by ISC giving not less than one month's notice in writing following the original agreed completion date.
 - (b) by ISC forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum not subject to a bona fide dispute due under the terms of these Conditions (otherwise than as a consequence of any default on the part of ISC) and after written notice from ISC that such sum has not been paid (such notice to contain a warning of ISC to terminate); or
 - (c) by either party forthwith on giving notice in writing to the other if the other commits any serious breach of any term of these Conditions and (in the case of a breach capable of being remedied) shall have failed within 30 [thirty] days after the receipt of a request in writing from the other party so to do to remedy the breach (such request to contain a warning of such party's intention to terminate); or
 - (d) by either party forthwith on giving notice in writing to the other if the other shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business
- (3) Any termination of these Conditions (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination
- (4) In the event of Termination of the agreement due to a serious breach by either party the following principles shall apply to any remedy sought by the other party:-
 - (a) if such a breach is on the part of the Customer, ISC shall be entitled to payment in full for all goods and services delivered up to the point of Termination but not for the remainder of the Price; or
 - (b) if such a breach is on the part of ISC, the Customer shall be entitled to a refund of any payments made to ISC for which the relevant goods and services had not yet been delivered at the point of Termination

14. Assignment and Sub-Contracting

- (1) The Customer shall not assign or otherwise transfer these Conditions or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of ISC which shall not be unreasonably withheld
- (2) With the prior consent of the Customer which shall not be unreasonably withheld ISC shall be entitled to sub-contract all or any part of the performance of its obligations. Sub-contracting any part of these Conditions shall not relieve ISC of any of its obligation or duties under these Conditions
- (3) ISC shall ensure that any sub-contracted person or company engaged under this clause 14 shall be bound by all the same Terms and Conditions of this agreement.

15. Force majeure

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations

16. Warranties

- (1) The Customer hereby warrants to ISC that the use of the Software by the Customer shall comply with all obligations of the Customer owed to any licensor or owner of the Software including with respect to using the correct number of copies of multi-use software
- (2) ISC warrants that it has sufficient expertise to provide the Services and will exercise reasonable care and skill in the provision of the Services
- (3) ISC shall ensure the Services are undertaken and performed in compliance with all applicable laws in effect from time to time
- (4) ISC shall ensure that all Bespoke and Custom code delivered under this agreement is free of encumbrance

17. Liability

- (1) In particular, the Customer acknowledges that ISC may not have developed all the Software and that ISC may own no intellectual property rights in elements of the Software Accordingly the Customer further acknowledges that ISC is not responsible for any defects or errors in the Software not developed by ISC and may be subject to contractual terms which restrict ISC 's remedies in respect of such defects and ISC 's liability to replace defective Software The Customer therefore agrees that it may have to bear the expense of the replacement of Software not developed by ISC and that the terms of this clause are reasonable in all the circumstances
- (2) Except in respect of injury to or death of any person (for which no limit applies) the respective liability of ISC to the Customer under this agreement in respect of each event or series of connected events shall not exceed five million pounds
- (4) Notwithstanding anything else contained in these Conditions neither party shall be liable to the other for loss of profits or contracts or other indirect or consequential loss whether arising from negligence breach of contract or howsoever
- (5) ISC shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice

18. Waiver of remedies

No forbearance delay or indulgence by either party in enforcing the provisions of these Conditions shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred upon or reserved for either party is exclusive of any other right power or remedy available to that party and each such right power or remedy shall be cumulative

19. Entire agreement

No addition to or modification of any provision of these Conditions shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties

20. Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the registered office from time to time of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notices must be delivered personally or by first class prepaid letter and shall be deemed to have been served if by hand when delivered or if by first class post forty-eight hours after posting

21. Severability

Each provision of these Conditions shall be construed separately and notwithstanding that any provision may prove illegal or unenforceable the remaining provisions shall continue in full force and effect

22. Law

These Conditions shall be governed by and construed in accordance with the laws of England