

Standard Terms and Conditions for the Supply of Services

These Terms and Conditions may only be varied with the written agreement of *ictpm*. These Terms and Conditions shall apply to all contracts for the supply of Services by *ictpm* to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.

1. Definition and Interpretation

1.1. In these Terms and Conditions the following words shall have the following meanings:

"Agreement" means the agreement between *ictpm* and the Customer incorporating either:-

- (i) the Schedule for the Supply of Services and these Terms and Conditions; or
- (ii) the Outline Schedule for the Supply of Services, these Terms and Conditions, and an notification of acceptance from both *ictpm* and the Customer

"Background IPR" means rights in any Intellectual Property, excluding Foreground IPR, owned or controlled by any party arising before commencement of the Services, or in parallel independently of the Services, which is necessary for carrying out the Services.

"Confidential Information" means any information given to or obtained by *ictpm* from the Customer, or by the Customer from *ictpm*, under the Agreement relating to the Services and designated as confidential in writing by the party owning the information.

"*ictpm*" shall mean ICT Project Management Limited.

"Customer" means the person or persons to whom the Agreement is issued. Where the Customer consists of more than one person, the obligation of those persons in respect of the Agreement shall be joint and several.

"Foreground IPR" means rights in any Intellectual Property obtained, found, produced, devised, developed, or made during or generated in the course of the carrying out of the Services.

"Intellectual Property" means any copyright, design right, trademark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, including Technical Information, the rights to which are protectable by law; and "Intellectual Property Rights" and "IPR" shall mean any rights in Intellectual Property.

"Price" means the charges, taxes and disbursements specified in either the Schedule for the Supply of Services or the Order Form.

"The Services" means the services to be supplied by *ictpm* to the Customer as specified in the Agreement.

"Technical Information" means and includes inventions, discoveries (and applications thereof), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.

"Terms and Conditions" means the *ictpm* Standard Terms and Conditions for the Supply of Services.

"VAT" means UK value added tax.

1.2. Clause headings shall not affect the interpretation of these Terms and Conditions.

1.3. Unless the context otherwise requires, references in these Terms and Conditions:

- 1.3.1. to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- 1.3.2. to one gender include all genders, and reference to singular include the plural and vice versa;
- 1.3.3. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

2. The Services

- 2.1. *ictpm* agrees to provide the Services to the Customer in accordance with these Terms and Conditions and any Special Conditions agreed between the parties.
- 2.2. In carrying out the Services *ictpm* undertakes to the Customer that it shall use its reasonable endeavours to undertake the Services in accordance with good commercial practice and within the time period agreed between the parties and at all times exercising reasonable skill and care.
- 2.3. *ictpm* cannot undertake to provide the Services or services of this type for the Customer exclusively.
- 2.4. All materials and items of equipment which are to be supplied by the Customer for the purpose of the Services shall be delivered, assembled, maintained, dismantled and collected at the Customer's cost and in accordance with the requirements of the *ictpm* staff responsible for the Services. All equipment and other accessories (except those owned and provided by the Customer) and all materials obtained by *ictpm* and/or used for the purposes of the Services shall remain the property of *ictpm*.
- 2.5. If the Services involve the Customer's employees attending *ictpm*'s premises, the Customer shall remain responsible for their salaries and other associated costs. The Customer will procure that such employees comply with all security, health and safety, and other relevant procedures whilst on *ictpm* premises. *ictpm* may at any time at its absolute discretion refuse to accept or continue to accept any particular employee of the Customer on its premises. *ictpm* is under no obligation to allow the Customer's employees to witness the Services being carried out.
- 2.6. If the Services involve *ictpm*'s employees attending the customer's premises, the Customer shall provide at its cost whatever equipment and materials including software, data, and access to enable the Services to be carried out. The Customer is responsible for ensuring that *ictpm*'s employees are informed of all security, health and safety, and other relevant procedures to be observed on the Customer's premises. *ictpm* is under no obligation to allow the Customer's employees to witness the Services being carried out.
- 2.7. No order for the supply of Services is binding on *ictpm* unless and until it has been accepted by *ictpm* in writing.

3. Warranties and Indemnities

- 3.1. The Customer shall provide *ictpm* with all such information and materials as are necessary for *ictpm* to carry out the Services in accordance with clause 2 above and the Customer warrants that all information provided by it or on its behalf to *ictpm* will be accurate. The Customer further warrants that it will give *ictpm* written notice of any legal or other hazards, known or suspected, by the Customer that might potentially arise in the use of such materials.
- 3.2. The Customer warrants that it has the necessary rights and is entitled to use or disclose for the purposes of the Services all Intellectual Property supplied by it to *ictpm* for the purposes of carrying out the Services.
- 3.3. The Customer shall indemnify and keep indemnified on a full and unqualified basis *ictpm* against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage incurred by the reason of any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services.

4. Liability and Insurance

- 4.1. Except in the case of personal injury (including death) caused by the negligent or wilful act or omission of either party, or of any servant or agent of either party, the aggregate liability of either party to the other arising out of any breach or breaches of the Agreement shall not exceed the total amount payable by the Customer to *ictpm* in accordance with the

Agreement. The provisions of this clause 4.1 are without prejudice to the Customer's obligations under clause 3.3 above.

4.2. In the event of any breach or breaches of the Agreement by *ictpm*, *ictpm* shall not be liable to the Customer in respect of any resulting:

- 4.2.1. loss of profit, business, revenue, goodwill or anticipated savings;
- 4.2.2. indirect or consequential loss or damage.

4.3. The Customer shall be liable to *ictpm* for any claim made against *ictpm* as a result of any tort committed by the Customer's employees whilst on *ictpm* premises.

4.4. The Customer shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of the Customer's indemnities or compensation obligations under the Agreement and shall at the request of *ictpm* produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

5. Confidentiality

5.1. *ictpm* shall not without the Customer's written consent disclose to any person other than the Customer or use otherwise than for the purpose of carrying out the Services:-

- 5.1.1. the nature of the Services or the results obtained; or
- 5.1.2. any secret or Confidential Information before or after the date of the Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:
 - (i) is acquired from the Customer or is specific to the Customer's business; and
 - (ii) has not been developed or generated independently by *ictpm*; or
 - (iii) has not been in *ictpm*'s possession prior to acquisition from the Customer; or
 - (iv) is not in the public domain at the time of disclosure to *ictpm*, or at any time after its disclosure to *ictpm*, through no breach of the Agreement by *ictpm*; or
 - (v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.

6. Invoicing and Payment Terms

6.1. Payments of the Price shall be made within the period specified on *ictpm*'s invoices. Payment shall be made in £ sterling.

6.2. All payments shall be made by electronic transfer of funds. An administration charge of twenty-five pounds sterling will be made for any payments requiring administrative intervention.

6.3. All sums due from the Customer to *ictpm* which are not paid on the due date (without prejudice to the rights of *ictpm* under the Agreement) shall bear compounded interest at the rate of 4% over the daily base rate of the Bank of England.

6.4. All sums due from the Customer to *ictpm* which are not paid on the due date (without prejudice to the rights of *ictpm* under the Agreement) shall automatically be subject to an additional administration charge of twenty-five pounds sterling.

6.5. All sums due from the Customer to *ictpm* which are not paid on the due date (without prejudice to the rights of *ictpm* under the Agreement) shall bear any additional reasonable costs incurred by *ictpm* in obtaining payment from the customer.

7. Publication

7.1. The results of the Services may be freely published by the Customer, but the Customer will not make any reference to *ictpm* without obtaining prior approval in writing of each reference in its context, which approval shall not be unreasonably withheld.

7.2. The results of the Services may not be published by *ictpm* without obtaining prior approval from the Customer in writing of each reference in its context, which approval shall not be unreasonably withheld.

8. Intellectual Property Rights

8.1. Subject to any third party rights other than by virtue of the Agreement, to the extent that the provision of the Services results in the creation of any Foreground IPR such Foreground IPR shall vest in *ictpm*. *ictpm* shall grant to the Customer a non-exclusive licence to use the Foreground IPR for the purposes of the Customer in the direct field of application for which the Services were carried out. The exact terms of any licence will be agreed through good faith negotiations between *ictpm* and the Customer.

8.2. Ownership or title to any Background IPR shall not be affected by these Terms and Conditions or by the Agreement.

9. Force Majeure

ictpm will not be held responsible for failure or delay in carrying out the Services due in whole or in part to any circumstances whatsoever beyond its reasonable control.

10. Termination

10.1. The Agreement may be terminated by *ictpm* on giving three months written notice.

10.2. Either party may terminate the Agreement forthwith by written notice given to the other where: that other party commits a breach of the Agreement which the party serving the notice reasonably considers is not capable of remedy; or that other party has continued in any breach of the Agreement for more than 30 days after being warned in writing of such breach.

10.3. *ictpm* may terminate the Agreement forthwith by written notice given to the Customer if:-

- 10.3.1. the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or
- 10.3.2. the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or
- 10.3.3. the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.

10.4. If the Customer does not make payments in accordance with clause 6 above *ictpm* reserves the right to cease the Services and, if it thinks fit, to terminate the Agreement forthwith by written notice given to the Customer.

11. Effect of termination

11.1. Termination of the Agreement shall not affect any obligation or liability of any Party which has accrued at the date of termination.

11.2. Except for clauses 3, 4, 5, 6, 7, 11, 17, 18 and except in respect of any other accrued rights, neither party shall be under any further obligation to the other.

11.3. Upon termination of the Agreement *ictpm* may set off against any debt owed by the Customer to *ictpm*, or the amount of loss and/or damage *ictpm* have reasonably assessed as resulting from the termination of the Agreement, any sums otherwise due to the Customer.

12. Assignment and sub-contracting

12.1. The Customer shall not assign or sub-contract the Agreement or any part of it without the prior consent of *ictpm* in writing, such consent not to be unreasonably withheld.

12.2. *ictpm* may at any time, on reasonable notice in writing to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.

12.3. *ictpm* shall be free to subcontract or otherwise deal with the whole or any part of the Services.

13. Waiver, variation and representations

13.1. No delay by *ictpm* in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.

13.2. No waiver by *ictpm* of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

13.3. Any variation of any provision of the Agreement must be effected in writing and issued by *ictpm*. No purported variation by any other means shall bind the *ictpm*.

13.4. No statement in any publication issued by *ictpm* constitutes a term of the Agreement, nor a representation in reliance upon which the Agreement has been entered into.

14. Legal Relationship

14.1. Nothing in the Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Customer a servant of *ictpm* or of making any official of *ictpm* an employee or servant of the Customer.

14.2. Neither of the parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

15. Severability

If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

16. Notices

Any notices to be given under the Agreement shall be in writing and sent to the relevant address or addresses set out in the Agreement by hand, electronic mail transmission, or prepaid post. Such notices shall be deemed to be received at once if sent by electronic mail transmission and if sent by prepaid first class post within the United Kingdom shall be deemed to be served on the second business day after posting. If a notice is sent to or from abroad by prepaid mail it shall be deemed to be served on the fifth business day after posting.

17. Dispute resolution

17.1. *ictpm* and the Customer shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.

17.2. If any such dispute cannot be resolved in accordance with condition 18.1, the dispute may, by agreement between *ictpm* and the Customer, be referred to mediation in accordance with condition 18.3

17.3. The procedure for any such mediation shall be as follows:

17.3.1. A neutral person ("the Mediator") shall be chosen by agreement between *ictpm* and the Customer, alternatively, either party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to either party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator.

17.3.2. *ictpm* and the Customer shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, *ictpm* and the Customer may at any stage seek from CEDR guidance on a suitable procedure.

17.3.3. Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the parties in any future proceedings.

17.3.4. If *ictpm* and the Customer reach agreement on the resolution of the dispute, that agreement shall be reduced to writing and shall be binding upon *ictpm* and the Customer.

17.3.5. Failing agreement, either *ictpm* or the Customer may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of *ictpm* and the Customer.

17.4. For a period of sixty days from the date of the appointment of the Mediator, or such other period as *ictpm* and the Customer may agree, neither of the parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

18. Jurisdiction and Governing Law

The Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.

Document Details

Update Record

Draft	01.00	15 Jan 2006	Initial version.
Issue	01.00	22 Jan 2006	Release version.
Issue	01.01	26 Feb 2006	Addition of section 6.3, update of document style.
Issue	01.02	08 Sep 2008	Addition of sections 6.2 and 6.4.

Document Components

Base Directory

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Documents & Files

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