



Independent Trade Association of Computing Specialists

ITACS UK

Terms and Conditions

These Terms and Conditions shall apply and be incorporated into all agreements for ITACS UK Ltd's services and products that have been agreed that ITACS UK Ltd will provide to the Client (as defined below). By using ITACS UK Ltd's services and products you expressly agree to be bound by these Terms and Conditions and to comply with them and all applicable laws and regulations governing the use of such supplied services. ITACS UK Ltd reserves the right to change these Terms and Conditions at any time, effective immediately upon Majority Committee vote on ITACS UK Website (as defined below). Please check periodically to ensure you have the latest edition. This is an important document and affects your rights and obligations. These Terms and Conditions may not be altered or modified by the use of any other documents or oral communications except by authorised representatives of ITACS UK Ltd.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Agreement" means these Terms and Conditions, and any Members Costs from time to time.

"Associated Company" means any company which is in relation to another company its parent undertaking or its subsidiary undertaking and parent undertaking and subsidiary undertaking shall have the meaning given to them in the Companies Act 1985.

"Authorised User" means an officer or employee of the Client who has been authorised to access any products or services supplied by ITACS UK Ltd in accordance with this Agreement.

"Client" means the person named as such in the Members Cost.

"Contract Term" means the period of duration of this Agreement as detailed in the Members Costs.

"Corporate Website" means the website located at <http://www.ITACS.org.uk/> only.

"Data" means and includes, any information provided by the Client or its agents for use and contained

within any product or service supplied by ITACS UK Ltd.

"Payment Schedule" means the schedule detailing when the Client is required to make payments of sums due to ITACS UK Ltd.

"Products and/or Services" means any products or services provided by ITACS UK Ltd to the Client as detailed in the Members Costs.

"Software" Means the computer/software code developed by or licensed to ITACS UK Ltd used to operate and/or used to provide the Products and/or Services.

"Deliverables" any implementation or configuration of software, applications support, reports, analysis, re-existing works, and/or other deliverable items as detailed in the Members Costs.

"Members Costs" means the document detailing the Products and/or Services to be provided by ITACS UK Ltd to the Client, any Deliverables and/or the amounts payable by the Client to ITACS UK Ltd for making available such products and services to the Client.

"Normal Working Day" means Monday to Friday excluding public holidays as recognised in England, Wales and Scotland.

"Normal Working Hours" means between 08:30 and 17:30 UK time each Normal Working Day.

1.2 References to Sections, Clauses and Sub-Clauses are to the sections, clauses and sub-clauses of this Agreement.

1.3 The headings in this document are inserted for convenience only and shall not effect the construction or interpretation of this Agreement.

2. Personnel

2.1 Each party is responsible for the supervision, direction and control of their respective personnel. ITACS UK Ltd reserves the right to determine the appointment and assignment of its given personnel and may subcontract all or any part of the provisions of the Services and Products to a subcontractor as selected by ITACS UK Ltd.

2.2 ITACS UK Ltd shall perform the Products and Services using such personnel as it considers suitably qualified. ITACS UK Ltd shall use all reasonable endeavours to maintain continuity of personnel throughout the provision of the Products and Services but reserves the right at any time to vary personnel upon reasonable notice.

3. Client's Obligations

3.1 Access to Products and Services provided by ITACS UK Ltd shall only be permitted to Authorised Users.

3.2 In consideration of ITACS UK Ltd making Products and Services available to the Client, the Client shall pay ITACS UK Ltd' charges from time to time as detailed in the Members Costs and in accordance with Clause 4 below.

3.3 The Client shall use all reasonable efforts to ensure that Products and Services supplied are only used by those of its officers and employees who are Authorised Users. Should the Client know or suspect that an Authorised User's password has been made available or is being used by an unauthorised third party, the Client shall immediately inform ITACS UK Ltd.

3.4 The Client will provide ITACS UK Ltd with all Data and all other information ITACS UK Ltd may reasonably request from time to time to allow ITACS UK Ltd to make Products and Services available to the Client and will provide such Data and information in the format specified by ITACS UK Ltd in the Members Costs. All information the Client supplies will be complete, accurate and given in good faith. Such information will be treated as Confidential Information under the terms of Clause 12 of this Agreement.

3.5 The Client acknowledges that Products and Services supplied by ITACS UK Ltd may enable the Client and/or the Client's employees to access other Products and Services and that any other product or service may have its own terms and conditions of use which are specific to such site. When the Client and/or the Client's employees access browse or use such site the Client and/or the Client's employees (as applicable) accept without limitation or qualification the terms and conditions of use set out in such Product or Service.

4. Charges and Payment Terms

4.1 The Client shall be invoiced for the first months subscription cost and any associated set up costs, payable immediately (calculated on a pro-rata basis), then on a monthly basis by standing order as detailed in the Payment Schedule. Payment for Services provided will be invoiced and payable within 30 days of the date of invoice. All amounts due are payable in UK pounds sterling.

4.2 Any travel and out of pocket expenses incurred by ITACS UK Ltd or the Client in relation to the provision of the Products and Services shall be borne by the Client. All invoices shall detail such expenses and are due and payable upon presentation to the Client.

4.3 ITACS UK Ltd reserves the right having given the Client seven (7) days prior written notice to temporarily suspend Products and Services available to the Client in cases of late or non payment of ITACS UK Ltd' invoices.

4.4 The Client shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to ITACS UK Ltd.

4.5 Interest shall be chargeable on any amounts overdue to ITACS UK Ltd at the rate of four percent per annum above the base rate from time to time set by the Bank of England from the due date for payment until receipt by ITACS UK Ltd in full of the outstanding amount whether or not after judgement and without prejudice to any other right or remedy of ITACS UK Ltd including the recovery of costs incurred in pursuing the outstanding debt.

4.6 The charges detailed in the Members Costs are exclusive of any value added and other applicable taxes. Such taxes will be added to any invoices issued by ITACS UK Ltd at the rate current at the date of the invoice.

4.7 ITACS UK Ltd shall invoice the Client, in advance, on or shortly after ITACS UK Ltd has supplied Products and Services as defined in Members Costs ready for the Client's use and yearly thereafter until lawful termination of this Agreement. The Client shall pay ITACS UK Ltd's charges in accordance with the Payment Schedule.

4.8 At the end of the Contract Term, this Agreement will be automatically renewed for the minimum period of 3 months and will continue after such renewal unless terminated by either party giving not less than three months' written notice prior to the expiry of the Contract Term or any anniversary thereof.

4.9 ITACS UK Ltd may vary any recurring charges subject to the appropriate Banding Categories for the use of Products and Services as set out in the table within the section headed Subscription Costs in the Members Costs and give the Client at least thirty (30) days written notice of any increase in charges. ITACS UK Ltd may not apply an increase of more than the increase in the retail prices index or 5% per annum compound since the last increase whichever is the greater. Any increase in the recurring charges must be communicated to the Client not less than three months prior to the next date for payment.

5. Marketing

5.1 Subject to the member's prior written approval, the Client agrees that ITACS UK Ltd may use the Member's company name and logo in ITACS UK Ltd's promotional material and communications including, but not limited to, proposals, presentations, Website, or a corporate brochure.

6. Conditions of Sale

6.1 The terms of this Agreement and the Members Costs shall apply to the provision of the Products and Services. Any terms and conditions stated on the Client's purchase order shall be null and void unless expressly agreed to in writing by ITACS UK Ltd.

7. Warranties, ITACS UK Ltd's Obligations and Customer Support Services

7.1 ITACS UK Ltd makes no warranty that the use or operation of any Products or Services will be uninterrupted or error free.

7.2 Subject to clause 4.3, ITACS UK Ltd warrants that such Products and Services supplied to the client will be provided on a continuous basis throughout the Contract Term and shall promptly credit or refund to the Client a pro rata proportion of the yearly subscription fee for any period of unavailability of the Service longer than 60 hours, such period to commence from the receipt of written/fax/e-mail notice of any unavailability of such Products or Services from the Client.

7.3 ITACS UK Ltd will update Products and Services and the Software from time to time to enhance the then current functionality and structures of the Data to improve its usability by the Client and for but not limited to general improvements, security updates. For the avoidance of doubt this does not include new and separate modules and products developed by ITACS UK Ltd. ITACS UK Ltd reserves the right to change the structure of the Data to enable it to provide these enhancements.

7.4 Subject to the prior written acceptance by ITACS UK Ltd of an agreed order with the Client and a signed Members Costs agreement from the Client, ITACS UK Ltd will provide the Products and Services with all reasonable skill, care and diligence and in accordance with the Members Costs. Timely completion of any Products and Services by ITACS UK Ltd will be subject to the timely satisfaction of the Client of any Client obligations or requirements as detailed in the relevant Members Costs.

7.5 Subject to applicable legislation, ITACS UK Ltd may provide the Products and Services from any hardware installation forming part of the Product and Service from anywhere in the world and may, at any time, transfer the provision of such Products and Services from one installation to another. ITACS UK Ltd does not guarantee that any such installation is dedicated to the sole use of the Client. In order to fulfil its obligations in managing supplied Products and Services, ITACS UK Ltd may at any time amend it and any documentation relating thereto for any reason including, but not limited to: legal; safety; business; or technical considerations

8. Limitation of Liability

8.1 ITACS UK Ltd does not limit its liability (if any) in respect to the following: fraud, or the death of, or personal injury to, any person caused by negligence.

8.2 ITACS UK Ltd's liability to the Client for actual loss by the Client caused either by; breach of contract or misrepresentation by ITACS UK Ltd; or defects in supplied Products and Services resulting from ITACS UK Ltd's negligence, or the negligence of ITACS UK Ltd or its employees or agents in the provision of the Products and Services is limited to a maximum of the actual amount paid by the Client to ITACS UK Ltd under this Agreement. Such limit shall apply to each event or series of connected events.

8.3 Subject to Clause 8.1 neither party accepts any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason), including under any indemnity given, for any loss of profits, loss of sales or turnover, loss of or damage to reputation, loss of contracts, loss of Clients, loss of, or loss of use of, any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, indirect loss or damage, consequential loss or damage, loss(es) directly or indirectly due to network access by third parties; or special loss or damage. For the purposes of this Clause 8.3 the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

9. Intellectual Property Rights

9.1 The intellectual property rights in any Products and Services and any hardware or the Software is and will at all times remain ITACS UK Ltd's property or that of ITACS UK Ltd's licensors.

9.2 ITACS UK Ltd grants the Client a non-exclusive, non-transferable licence to use the Products and Members as detailed in Members Costs, and any reports, information, drawings, software, or other material specifically produced by ITACS UK Ltd pursuant to this Agreement only for the purposes of this Agreement or for which they were prepared. Nothing in this Agreement shall operate to prevent ITACS UK Ltd from making use of know-how acquired, principles learned or developed or experience gained during the performance of this Agreement on future contracts with third parties or the Client.

9.3 The Client shall not without the prior written consent of ITACS UK Ltd: market, exploit or make any Product or Service or Software or part thereof available to another person or permit another person to use such Products and Services or Software or part thereof; use Products and Services or Software or part thereof on behalf of or for the benefit of another person or company; decompile or disassemble the program code or any other part of Products and Services or the Software except to the extent permitted at law; make copies of the Software; charge or otherwise deal in or encumber the Software; or delete, remove or in any way obscure ITACS UK Ltd's or Partners proprietary notices on Products and Services or any copy of the Software alter or modify the Products and Services Software; combine the Products or Services or Software with or incorporate it in any other products, services, or software; and shall not attempt to do so or permit others to do so.

9.4 Nothing in this Agreement shall be deemed to or require ITACS UK Ltd to transfer, assign or license any intellectual property rights to the Client, copyright and any other intellectual property rights in any Deliverables produced by ITACS UK Ltd pursuant to this agreement shall be vested in and remain the absolute property of ITACS UK Ltd or its licensors.

10. Termination

10.1 Without prejudice to any other rights to which it may be entitled, either party may terminate this Agreement with immediate effect:

10.2 if the other party commits any material breach of any of the terms herein and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified under this Sub-Clause 10.2 of the breach, such notice to refer to the notifying party's intent to terminate this Agreement unless the breach is remedied; or

10.3 if an order is made or a request is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if a receiver, administrator or administrative receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt.

11. Effects of Termination

11.1 Upon termination:

11.1.1 ITACS UK Ltd shall be entitled to cancel the provision of Products and Services to the Client;

11.1.2 30 days from termination date, ITACS UK Ltd will archive all Client Data from Products and Services;

11.1.3 All unpaid invoices from ITACS UK Ltd become due and payable; and

11.1.4 Subject to Clause 11.2 all rights of the Client under this Agreement shall terminate on the termination date.

11.2 The following Clauses shall survive termination
Clause 8 Limitation Of Liability
Clause 9 Intellectual Property Rights
Clause 11 Effects of Termination
Clause 12 Confidentiality
Clause 15 Contract (Rights of Third Parties) Act 1999

12. Confidentiality

12.1 Each party agrees and undertakes that during the term of this agreement and for five years after its termination it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party ("Confidential Information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of

this Agreement or subsequently comes lawfully into the possession of that party from a third party.

12.2 To the extent necessary to implement the provisions of this Agreement each party may disclose the Confidential Information to those of its employees and sub-suppliers as may be reasonably necessary or desirable provided that before any such disclosure each party shall make those employees and sub-suppliers aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-suppliers with them.

12.3 Where ITACS UK Ltd exercises the rights outlined in clause 12.2 ITACS UK Ltd will use all reasonable endeavours to keep confidential all information received from the Client or for the Client in connection with this Agreement.

12.4 ITACS UK Ltd will keep the Client's Data secure and apply appropriate policies and safeguards. If any breach of security should occur due to the standard policies and safeguards not being adhered to, then ITACS UK Ltd will inform the Client immediately of the breach of security and work with the Client as a matter of highest priority to ensure the security and integrity of the Data.

12.5 ITACS UK Ltd will store archived Client data for an indefinite period or until ordered by a court of law to either destroy or release to a nominated third party.

13. Force Majeure

13.1 Excepting any obligation to make payment hereunder the obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying with them by any cause beyond its reasonable control including events such as, but not limited to: strikes; lock-outs; labour disputes; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order; rule; regulation or direction; accident; loss of electrical power; loss of telephone/internet/wide area network and similar infrastructure; fire; flood; storm; materials, unavailability of goods or raw materials.

13.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than thirty (30) days after written notification as aforesaid either party may terminate this Agreement in accordance with Clause 10 of this Agreement.

14. Dispute Re Members

14.1 All disputes between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's director. The directors shall meet and attempt to resolve the dispute within a period of thirty (30) days from the date of referral of the dispute to them.

14.2 Upon such disputes being unresolved after a period of thirty (30) days the matter will be forwarded to an independent arbitration service. Such costs involved will be born by Client unless ITACS UK Ltd is found to be liable for such costs after an agreed outcome has been resolved

15. Contract (Rights of Third Parties) Act 1999

15.1 Nothing in this Agreement is intended to confer on a person any right to enforce any term of this Agreement which that person would not have had but for the Contract (Rights of Third Parties) Act 1999.

16. Data Protection

16.1 Under the Data Processing rules within the Data Protection Act (1998) ITACS UK Ltd is fully registered.

16.2 The Client confirms that it is also registered under and conforms to the requirements of the Data Protection Act (1998)

16.3 Other than the provision of Products and Services and in accordance with Clause 2.2 and unless expressly agreed with the Client, ITACS UK Ltd will not utilise the Data for any other purpose.

17. Amendments

17.1 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

18. Assignment and Change of Ownership

18.1 Client is not entitled to transfer or assign this Agreement without ITACS UK Ltd's prior written consent. ITACS UK Ltd may assign or sub-contract this Agreement or any part thereof.

18.2 A change of Client ownership does not constitute a break in the contract for the Client. If a change of Client ownership occurs ITACS UK Ltd reserve the right to terminate the contract subject to ITACS UK Ltd's written notice.

19. Waiver

19.1 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

20. Severability

20.1 If any provision of this Agreement becomes invalid, illegal or unenforceable then such provision shall be severed and the remainder of this Agreement shall continue in full force and effect.

21. Notices

21.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in this Agreement or such other address as either party notifies to the other from time to time. Any notice given according to the above

procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

21.2 Any notifications by the Client under this Agreement must be sent to:- Client Response Team, ITACS UK Ltd,

22. Governing Law and Jurisdiction

22.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its intellectual property rights or Confidential Information.

23. By signing the Members charter you agree to abide to the code of ethics and code of conduct

23.1 By signing and agreeing to these terms and conditions you agree to be bound by the Member's charter, Code of practise and code of Ethics, any breach of either of these could result in removal of your membership