

<<Client Name>> Professional Services Agreement

Summary:

Version: 2.0
Prepared by: Russell Tewkesbury
Authorised by: Bob Simons
Email: Russell.Tewkesbury@issolutions.co.uk
Phone: 01932-893314

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IS Solutions Plc
91-93 Windmill Road
Sunbury-on-Thames
Middlesex, TW16 7EF
United Kingdom
+44 (0)1932 893300



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1.0 The Agreement

This Contract is made the (Number) day of (Month) 20xx

Between:

IS Solutions Plc

of Windmill House, 91-93 Windmill Road, Sunbury-on-Thames, Middlesex
TW16 7EF (Hereinafter called "the Company") of the one part

And

<<Client Name>>

of (The Clients Address) (Hereinafter called "the Client") of the other part

(each a "Party" and together referred to as "Parties")

The following has been agreed:

1. The Company shall perform the services specified in the Bid Proposal Schedule attachment hereto entitled "Statement of Services"("the Professional Services").
2. The Client shall pay to The Company the sums specified in the Bid Proposal Schedule attachment hereto entitled "Statement of Price" ("the Price") and all other sums payable hereunder.
3. The Statement of Services and the Statement of Price together with any appended Schedules are subject to the terms and conditions specified in the attachment hereto entitled "Professional Services Terms and Conditions".
4. IS Solutions and the Client may sign additional Schedules in the future, which shall form part of this agreement. Each Schedule shall

be automatically deemed to include all the terms and provisions of this agreement.

- a. the parties may otherwise agree in writing; and
 - b. whenever the provisions of a Schedule or an Appendix to a Schedule conflict with the provisions of this Agreement, the provisions of the schedule and that Appendix control and take precedent over the provisions of this Agreement, but only for the purposes of that Schedule and the terms and provisions of this Agreement are not otherwise amended, modified, cancelled, waived or released.
5. In the event of conflict between the terms and conditions of this agreement and the terms and conditions of the Company's standard terms and conditions, this Agreement shall prevail.
6. The Company defines the "Application" as any Internet, Intranet or Extranet Web Site or Browser based application as detailed in the Statement of Services.

2.0 Professional Services Terms and Conditions

2.1 Price

- 2.1.1** The Company staff is charged to the Client on a daily basis (7.5 hours) at the fee rates unless otherwise specified in The Company Bid Proposal, Schedule.
- 2.1.2** The fee rates are exclusive of Value Added Tax and all taxes or duties, which may be levied upon such fee rates or any part thereof. Value Added Tax and all such taxes or duties shall be paid, where required by law, by the Client as additional charges hereunder.
- 2.1.3** The fee rates do not include travel, hotel or subsistence expenses or the cost of materials and external services incurred in performing the Professional Services. These shall be charged monthly in arrears.
- 2.1.4** Time worked beyond the normal working day including weekends and statutory holidays as defined by sub-clause **2.2** below shall be charged on an hourly pro-rata basis to the overtime rate paid to the Company's staff. This is to be agreed in writing by the Client prior to the Company undertaking time worked beyond the normal working day.
- 2.1.5** The fee rates are applicable for all work undertaken to 31st December. The rate table is revised annually and revisions take effect as of January 1st each year. We reserve the right to increase fee rates in line with the Computer Economics Limited (CEL) <http://www.celre.co.uk/> index for the previous 12-month period.

2.2 Staff

- 2.2.1** Each party agrees that when its staff are present on the premises of the other party they shall comply with such rules and regulations as are notified to them for the conduct of staff on those premises.
- 2.2.2** This sub-clause concerns the Company staff engaged in the Professional Services.
- a)** The Company staff shall at all times remain under the direction of the Company, although the Company recognises that the Professional Services may require the Company staff to perform work in relation to an activity managed by the Client and in this

event the Client shall be responsible for the direction and management of such activity.

- b)** The length of the normal working day for the Company staff shall be 9a.m. to 5.30p.m. with one-hour midday break. Any overtime, weekend working and working during statutory holiday must be approved in writing, in advance by the Client.
- c)** The Company shall consult with the Client to coordinate holidays for its staff where appropriate.
- d)** The Client may request replacement of any the Company staff engaged in providing the Professional Services. Providing that such request is made in writing stating reasons for the request, the Company shall not unreasonably withhold its agreement. The Client shall bear the costs of replacing such staff unless The Client can show that the reason for its request is some act of misconduct, incompetence or negligence by the staff member concerned.
- e)** If the Company deems it necessary it may replace any member of the Company staff, endeavoring to give reasonable notice thereof. The Company shall bear the cost of training replacement staff unless the replacement is necessitated by an event outside the Company's reasonable control.

2.2.3 Each party agrees that for a period until twelve months after the completion of the Professional Services it shall not employ or engage on any other basis or offer such employment to any of the other party's staff or contractors who have been associated with the provision of the Professional Services without the other party's prior agreement in writing.

2.2.4 Each party agrees that if it employs or engages any person contrary to sub-clause **2.2.3** above the party in default shall pay the other party as liquidated damages a sum equivalent to such person's annual salary at the time of leaving the employment of the other party or, in the case of a contractor, a sum equivalent to six months of contracted time.

2.3 Estimates

This Contract is performed on a time and materials basis and thus any timetable of work, schedule of delivery dates or fixed or ascertainable sum in the Statement of Price or elsewhere relating to the whole or any part of the Professional Services shall be deemed to be estimates only. Unless stated otherwise in the Statement of Price.

2.4 Timing

The Company undertakes to use its best endeavours to deliver the services described in the Statement of Services by the dates or timescales stated therein. Delivery timescales will be conditional on time not being lost due to lack of access to key staff or resources or lack of access to or approval of key documentation or specifications or as a result of actions or indecision by the Client.

2.5 Progress Reports and Meetings

The Company & the Client shall form a joint Project board for the purpose of jointly reviewing the progress of the project and deciding upon any corrective action required. The Client and the Company shall ensure that members on the board have sufficient authority to implement any corrective action identified. Meetings shall occur monthly unless otherwise agreed in writing.

2.6 Changes to the Professional Services

Either party may request at any time before the contract is terminated as specified in sub-clause **2.13** below that a change be made to the Professional Services. The Company may make a reasonable charge for investigating a proposed change and preparing a quotation/estimate for that change, whether or not subsequently implemented, subject to agreeing the basis of charging for doing so with the Client in writing before proceeding with the investigatory work. Each party shall have the right to reject any such change but shall not do so unreasonably. Changes shall be agreed in writing.

2.7 Payment

- 2.7.1** The Company shall submit invoices in respect of charges arising during each calendar month. The Client shall make payment within thirty days of receipt of the invoice unless agreed otherwise in the Statement of Price.
- 2.7.2** If the Client fails to pay any sum due under this Contract within the thirty day period referred to in clause **2.7.1** above interest shall be chargeable thereon from the date of issue of the applicable invoice until the date of payment at the rate of three percent per annum above the HSBC Bank Plc base lending rate.
- 2.7.2** If the Client fails to pay any sum due under this Contract, without prejudice to any other remedy, the Company may after giving the Client seven days notice withdraw the provision of the Professional Services or any part thereof until the payment is made; in which case

the price shall be increased by the amount of the costs and expenses incurred by the Company occasioned by such withdrawal.

2.8 Client Responsibilities

2.8.1 The Client agrees to make available an authorised representative ("the Client Project Manager") who shall:

- a)** be authorised to make binding decisions for the Client with regard to this Contract; and
- b)** provide The Company with all information concerning the Client's operations and activities, which may be required by the Company for the performance of the Professional Services.

2.8.2 The Client further agrees:

- a)** to provide the Company with office accommodation, facilities and access to the Client's premises as may be reasonably required for the conduct of the Professional Services; and
- b)** to execute all licenses for the Client or third party or pre-existing proprietary items as may be required under sub-clause **2.9.2** below.

2.9 Property Rights

2.9.1 All materials, documentation, computer programs, inventions (whether or not patentable) pictures, audio, video, artistic works and all other works of authorship including all world wide rights therein under patent, copyright, design right trade secret or other property right created or developed by the Company in providing the Services (the "Work Product"), shall belong to the Company. Save for and Client Confidential Information provided, the Company shall not be obliged to return any artwork or other material supplied by the Client for the provision of Services. The Company grants an exclusive licence to the Client in perpetuity for the use of an unlimited number of copies of the Work Product.

2.9.2 Any pre-existing proprietary item of the Company or a third party disclosed by the Company to the Client in performing the Professional Services shall remain vested in the Company (or the third party as the case may be) and the rights of the Client to use and reproduce the same are either set out herein or in a separate license which the Client hereby agrees to execute and be bound by.

2.9.3 The Client shall retain title to and all intellectual property rights in any pre-existing or proprietary items, which are submitted by the Client to the Company for the performance of the Professional Services.

2.10 Warranty

2.10.1 The Company undertakes to rectify any errors in software developed under this agreement that are notified in writing to the Company by the Client within 30 days of the date of acceptance at the fee rates and terms of payment specified herein.

2.10.2 The Client shall not be liable to pay any fees or other charges in respect of functional errors which are reasonably demonstrated by the Client to be by failure on the part of the Company, its employees, agents or sub-contractors to comply with quality procedures agreed in advance between the Company and the Client.

2.10.3 The Company warranty obligations are solely to rectify errors in software and supply the rectified software to the Client. Unless specified otherwise it is outside the scope of this agreement to apply such fixes to client systems.

2.11 Acceptance

The Client acknowledges and agrees that the express obligations and warranties made by the Company in this agreement are in lieu of, and to the exclusion of, any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this agreement, including without limitation, any warranty as to the care, skill, condition, quality, performance, merchantability or fitness for purpose of the Professional Services or any part of them.

2.12 Confidentiality and Publicity and Competition

2.12.1 Each party undertakes at all times to hold in confidence for the other party, to use only for the purpose of this Contract and not to print, publicise or otherwise disclose to any third party, Confidential Information of the other party. "Confidential Information" means any document, material, idea, data or other information which relates to the Company's or the Client's research and development, trade secrets or business affairs or which is marked as confidential and disclosed by either party for the purposes of this Contract. In addition, pre-existing proprietary items referred to in clause 2.9 shall be deemed to Confidential Information. "Confidential Information" does not however include any information which:

- a) is known to the receiving party and which is under no obligation of confidence at the time of disclosure by the other party; or
- b) is or becomes public knowledge through no wrongful act of the receiving party; or
- c) is lawfully obtained by the receiving party from a third party who in making such disclosure breaches no obligation of confidence to the other party; or
- d) is independently developed by the receiving party; or
- e) is disclosed by the other party to a third party with no obligation of confidence.

2.12.2 Notwithstanding **2.12.1** above, nothing in this Contract shall be construed to prevent or restrict the Company from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by the Company in the performance of this Contract.

2.12.3 The Company may refer to the Client's name as a customer of the Company's in publicity material but shall not do so without the Client's prior written permission (which shall not unreasonably be refused). The Client undertakes not to publicise work undertaken by the Company or the use of the Company's name without the prior written consent of the Company, which shall not be unreasonably refused.

2.12.4 Non-disclosure agreement attached for signature.

2.13 Minimum Period of Hire, Cancellation and Termination

2.13.1 The contract shall come into effect on the date this agreement is signed by yourselves and is for a minimum period of 12 months ("The Minimum Period") starting from the date the Service is made available to you or for any period we have agreed in writing with you.

2.13.2 After the end of the Minimum Period the contract will continue unless terminated by either party giving ninety days notice in writing. Such notice may expire at the end of the Minimum Period of Notice or at any time thereafter.

2.13.3 Either party may terminate this Contract by written notice to the other party if:

- a) the other party shall commit a material breach of its obligations under this Contract and shall not have remedied such breach within 14 days of receiving notice of such breach; or
- b) the other party shall have become bankrupt or suffer the presentation of a winding up petition or enter into liquidation (other than as a solvent company for reconstruction or amalgamation) or have a receiver appointed of its assets or any part thereof or an administration order is made against it.

2.13.4 Termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereafter accrue to either party.

2.14 Limitation of liability

2.14.1 The Company shall exercise reasonable skill and care in performing the Professional Services but shall not be responsible for the accuracy of advice based on information supplied by the Client or third parties. Responsibility for the use to which the results of the Professional Services are put shall remain with the Client.

2.14.2 Except as provided by sub-clause **2.14.4** and **2.14.5** below, The Company's liability for damages under or in connection with this Contract, howsoever arising (including but not limited to, breach of contract, negligence or tort or the use or inclusion of any document, material, idea, data or other information) shall be limited to the following sums:

- a) £1,000,000 for physical damage to or loss of tangible property caused by the Company's negligence; or
- b) £50,000 or the total of the sums paid by the Client under this Contract, whichever is the lower, for all other incidents; provided however that the Company shall have no liability for damages in respect of loss of profits or contracts or indirect or consequential loss or damage.

2.14.3 No claim shall be brought by the Client for damages or for any other remedy for breach of contract unless notice in writing of the claim (specifying in reasonable detail the event matter or default which gives rise to the claim) has been given to the Company not later than the expiration of three months from the provision of the Professional Services to which the claim relates.

2.14.4 In no circumstances shall the Company be liable to the Client or any third party for any loss whatsoever arising through or in connection with the content or use of the Client's "Application" by the Client or by

any user, other than the Company, (whether authorised or unauthorised) including, but not limited to:

- a) delay or inability to use the “Application”;
- b) any information, material or services displayed or available on the “Application” (including, but not limited to the use of discussion rooms or “e-cards”);
- c) use of the “Application” which is inappropriate, defamatory, indecent, unlawful, abusive, obscene, menacing, or is in breach of confidence, copyright, privacy, trademarks or any other rights (including intellectual property rights):
- d) any activity involving the transmission of viruses or any other harmful deleterious programs; or any activity which interferes with other users’ use of or access to the “Application”.

2.14.5 The limitations and exclusions set out in sub-clauses **2.14.2** and **2.14.3** shall not apply to personal injury, including death, caused by the Company’s negligence.

2.15 Indemnity

2.15.1 The Client agrees that it shall be liable for and shall indemnify the Company (both during and after termination of this agreement) against all costs, claims, demands, liabilities, expenses, damages or losses (including, without limitation, consequential losses, loss of profit, all interest, penalties, legal and other professional costs) made or brought by any third party, arising out of, directly or indirectly, the use or content of the “Application” (other than use by the Company or content posted thereon by the Company); or the Client’s failure to comply with any of its obligations in respect of the of the “Application” or under this agreement.

2.16 Force Majeure

2.16.1 Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under this Contract due to any cause outside its reasonable control, including, without limitation, strikes, lock-outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any government authority or failure of the public electricity supply.

2.16.2 If either party shall be prevented from meeting any of its obligations under this Contract due to any cause outside its reasonable control, it shall promptly notify the other party in writing and the other party shall grant a reasonable extension for the performance of this Contract, provided however that if either party shall have been prevented from

meeting its obligations for more than thirty days following the receipt of such notice then either party may terminate this Contract upon written notice.

2.17 Notices and Other Communications

Any notice, which includes any other communication whatsoever which is made in accordance with this Contract, should reference the Company Contract Number shown on the Bid Proposal Schedule attached to this Contract and shall, without prejudice to any other method of giving it, be sent by first class post to other party at the address stated on the front page of the Contract or to such other address as the respective party may advise by written notice from time to time.

2.18 Assignment

Either party without prior written approval of the other party shall assign no right or obligation under this Contract or the contract as a whole.

2.19 Waiver

No delay or failure of either party in enforcing against the other party any term or condition of this Contract and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under this Contract.

2.20 Legal Construction

2.20.1 This Contract constitutes the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes all proposals, understandings and agreements, whether oral or written.

2.20.2 Clause headings are inserted for convenience only and shall not affect the interpretation of this Contract.

2.20.3 The expression "this Contract" means the Statement of Services, the Statement of Price, the Professional Services Terms and Conditions and any other document the parties expressly agree and designate to form a part of this Contract and includes any variations thereto which shall have been agreed in writing by the parties.

2.20.4 English Law shall govern this Contract and the parties hereby submit to the jurisdiction of the English Courts.