

## GENERAL TERMS AND CONDITIONS RECITALS

IN CONSIDERATION OF the terms and conditions of this Agreement, and other good and valuable consideration, the premises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- A. ICS provides certain computer related products and services (as listed on the ICS Sales Order); hereinafter referred to as the ICS Order.
- B. CUSTOMER desires to acquire certain Hardware and/or Related Products; and/or CUSTOMER desires to obtain, pursuant to a license, ICS Software; and/or CUSTOMER desires ICS to provide related services.

### ARTICLE I - MISCELLANEOUS

1. **ASSIGNMENT.** CUSTOMER may assign this Agreement in whole or in part only with the prior written consent of ICS. ICS may assign this Agreement upon notice to CUSTOMER.
2. **CONFIDENTIAL INFORMATION.** The parties hereto agree that all proprietary information disclosed by the other during performance of this Agreement, and identified as proprietary, shall be held in confidence and used only in performance of this Agreement. Each party will exercise the highest standard of care to protect the other's proprietary data from unauthorized disclosures. If such data is publicly available, already in one party's possession or know, or is thereafter rightfully and lawfully obtained by one party from sources other than the other party, there shall be no restriction in its use.
3. **WAIVER.** Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.
4. **NOTICE.** Any notices or demands required to be given herein shall be given to the parties in writing, and by certified mail at the addresses specified herein, or to such other addresses as the parties may hereinafter substitute by written notice given in the manner prescribed in this section.
5. **ENTIRE AGREEMENT.** It is expressly agreed that this Agreement embodies the entire agreement of the parties in relation to the subject matter of this Agreement, and that there is no other oral or written agreement or understanding between the parties at the time of execution of this Agreement.
  - A. This Agreement cannot be modified except by the written agreement of all parties hereto. CUSTOMER further agrees that only an officer of ICS has the authority to obligate ICS and that CUSTOMER, in entering into this Agreement, has not relied on any representation, other than those expressly contained in this Agreement.
  - B. CUSTOMER and ICS further agree that all, if any, purchase orders or similar documents that purport to vary or add to the terms and conditions of this Agreement shall be null and void and shall not vary or add to the terms and conditions of this
  - C. The word "Agreement" as used herein shall mean this Agreement and all addenda hereto.
6. **GOVERNING LAW.** The parties agree that his Agreement shall be governed by the laws of the State of Texas. Except to the extent that the provisions of this Agreement are clearly inconsistent therewith, this Agreement will be governed by the Uniform Commercial Code of the State of Texas. Venue for all legal actions will be Collin County, Texas. To the extent that there is to be a delivery or performance of services under this Agreement, such services will be deemed "goods" within the definition of such Uniform Commercial Code except when deeming such services as "goods" would result in a clearly unreasonable interpretation.
7. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.
8. **BINDING EFFECT.** This Agreement shall ensure to the benefit of and bind the parties hereto, their

successors and assigns.

9. **AUTHORITY.** Each party hereby warrants and represents that their respective signatures set forth herein have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate or legislative action to execute this Agreement.

10. **SECTION HEADINGS.** All section headings contained herein are for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.

11. **EXPENSES FOR ENFORCEMENT.** In the event either party is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including, but not limited to, collection agency fees, attorney litigation fees, suit fees, and costs of investigation and litigation.

12. **FORCE MAJEURE.** Neither party hereto shall be in default by reason of any failure of its performance under this Agreement if such failure results, whether directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, civil disturbance, act of any government, de facto, or agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or a supplier as subcontractor, quarantine, restriction, epidemic, or catastrophe, lack of timely instructions or essential information from the other party.

13. **TAXES.** CUSTOMER shall pay all taxes arising out of this Agreement, except for taxes based upon the net income of ICS. If CUSTOMER is a tax exempt entity, CUSTOMER shall provide ICS with written proof of such status.

14. **EXHIBITS.** All Exhibits described in this Agreement are attached hereto, incorporated herein, and made a part of this Agreement for all purposes.

15. **MISSPELLINGS.** Misspelling of one or more words in this Agreement shall not invalidate this Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.

16. **EFFECTIVE DATE.** This Agreement is effective upon the date signed by an officer of ICS.

## **ARTICLE II - GENERAL TERMS**

1. **GENERAL TERMS.** CUSTOMER and ICS may agree that CUSTOMER shall acquire Hardware, Licensed Software, and/or Related Products and/or related services.

2. **ADDENDA.** If ICS has agreed to provide and CUSTOMER has agreed to acquire the following goods and/or services, CUSTOMER and ICS agree that the terms and conditions of such acquisition are governed by this Agreement and the addenda specified in this Section. Such Addenda are incorporated herein by reference for all purposes.

**APPLICABLE ADDENDUM**

HARDWARE SALES ADDENDUM  
SOFTWARE LICENSE ADDENDUM  
HARDWARE MAINTENANCE ADDENDUM  
SOFTWARE ASSURANCE ADDENDUM  
TRAINING ADDENDU  
DATA CONVERSION/EXTRACTION ADDENDUM  
OTHER ADDENDA

**GOODS AND/OR SERVICES**

COMPUTER HARDWARE  
ICS SOFTWARE LICENSE  
HARDWARE MAINTENANCE  
SOFTWARE ASSURANCE SUPPORT  
TRAINING  
DATA EXTRACTION  
OTHER GOODS AND/OR SERVICES AS SPECIFIED

3. OTHER GOODS OR SERVICES. If ICS has agreed to provide any other goods and/or services for CUSTOMER, CUSTOMER and ICS agree that the terms and conditions of such are governed by this Agreement and the documents specified herein. Such documents are incorporated herein by reference for all purposes.
4. DELIVERY. Delivery shall be defined as F.O.B. destination at CUSTOMER's premises or when CUSTOMER takes possession of the items to be delivered, whichever occurs first. ICS shall prepay the shipping and transit insurance charges for the items delivered, and unless included in this Agreement, the CUSTOMER agrees to reimburse ICS for such charges.
5. RISK OF LOSS. Risk of loss shall pass to CUSTOMER upon delivery.
6. INSURANCE. ICS shall insure the Hardware against loss, destruction, and theft until delivery. CUSTOMER agrees to provide adequate "All Risk" insurance to cover the Hardware while in CUSTOMER's possession.
7. SECURITY INTEREST. ICS shall retain a security interest in all hardware, related products, and in any proceeds for as long as CUSTOMER owes ICS any monies under this Agreement. CUSTOMER agrees to execute such document as may be necessary to perfect ICS' security interest.
8. PAYMENT. All amounts payable to ICS are due and payable in United States dollars at ICS' offices in McKinney, Texas U.S.A. All amounts not paid when due shall bear interest at the rate of one and one-half percent per month or the highest rate allowed by law, whichever is less.
9. LIAISON BETWEEN ICS AND CUSTOMER. ICS and CUSTOMER hereby designate the individuals named herein as Liaisons, who shall have the duty of acting as points of contact with personnel of ICS and CUSTOMER respectively. CUSTOMER's Liaison shall have the authority to accept goods and services provided by ICS. Either party may change its Liaison upon notice to the other party.
10. CUSTOMER DELAYS. If CUSTOMER delays ICS' performance, ICS shall be excused from performance for an amount of time commensurate with the delay caused by CUSTOMER. CUSTOMER acknowledges that its delay may excuse ICS from performance for an amount of time greater than the delay caused by CUSTOMER. Such delays by customer that may cause ICS to delay performance include, but are not limited to, the following:
- A. CUSTOMER's failure to adequately prepare CUSTOMER's premises for installation of the Hardware prior to the scheduled delivery date.
  - B. CUSTOMER's failure to order forms or supplies in a timely manner.
  - C. CUSTOMER's inadequacy in converting CUSTOMER's data for use by the ICS software including, but not limited to, the following:
    - (1) Failure to have prepared such data in the form and format requested by ICS;
    - (2) Failure to have prepared such data or before the date specified by ICS;
    - (3) Failure to have verified such data for accuracy; and,
    - (4) Submission of erroneous data to ICS.
  - D. CUSTOMER's failure to have adequately established the appropriate master files for the ICS Software.

E. CUSTOMER's failure to have completely prepared the Hardware' Installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.

11. NON-DISCLOSURE OF TERMS. Except when required otherwise by law, CUSTOMER agrees not to disclose the terms and conditions of this Agreement and the addenda hereto.

12. INJUNCTIVE RELIEF. CUSTOMER agrees that all Licensed Software provided pursuant to this Agreement is unique. If CUSTOMER breaches this Agreement, then in addition to such other remedies as are available to ICS, ICS may obtain injunctive relief. This Section shall not be deemed to in any way limit such remedies as may be available to ICS at law or equity.

13. LIMITATION OF LIABILITY. All warranties in this Agreement are subject to the following provisions:

A. ALL WARRANTIES IN THIS AGREEMENT ARE IN LIE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNLESS EXPRESSLY WARRANTED HEREIN, ALL GOODS AND SERVICES PROVIDED BY ICS PURSUANT TO THIS AGREEMENT ARE FURNISHED ON AN "AS IS" BASIS.

B. ICS SHALL NOT BE LIABLE FOR FAILURE TO PROVIDE, OR DELAYS IN PROVIDING, SERVICES UNDER THIS AGREEMENT IF DUE TO ANY CAUSE BEYOND ICS' REASONABLE CONTROL.

C. CUSTOMER EXPRESSLY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION AND USE OF THE HARDWARE, LICENSED SOFTWARE, AND PRODUCTS. CUSTOMER EXPRESSLY AGREES TO VERIFY THE RESULTS OF ITS USE OF THE HARDWARE, LICENSED SOFTWARE, AND PRODUCTS.

D. CUSTOMER IS SOLELY RESPONSIBLE FOR CREATING DAILY BACKUP AND VERIFYING THE VALIDITY OF BACKUPS. IN NO EVENT SHALL ICS RE RESPONSIBLE FOR THE LOSS OF DESTRUCTION OF DATA.

E. CUSTOMER UNDERSTANDS AND AGREES THE COMPLEXITY OF THE COMPUTER SOFTWARE PROVIDED IS SUCH THAT IT MAY HAVE INHERENT DEFECTS, LATENT OR MANIFEST. ICS SHALL USE ITS BEST EFFORTS TO CORRECT SUCH DEFECTS, IF ANY, IN ACCORDANCE WITH THE LIMITED WARRANTY GRANTED IN THE SOFTWARE LICENSE ADDENDUM.

F. CUSTOMER UNDERSTANDS AND AGREES THAT IT TAKES SOLE RESPONSIBILITY FOR USING THE GOODS AND SERVICES NOT PROVIDED BY ICS.

G. ICS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, SUCH AS, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS IN CONNECTION WITH, OR ARISING OUT OF THE EXISTENCE OF THE FURNISHING, FUNCTIONING, OR CUSTOMERS USE OF ANY SERVICES OR GOODS PROVIDED IN THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT, OR ON ANY OTHER THEORY OF LIABILITY. ICS WILL NOT BE LIABLE FOR DAMAGES AS INDICATED ABOVE, EVEN IF ICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

H. IN NO EVENT SHALL ICS BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE MONIES PAID BY CUSTOMER TO ICS PURSUANT TO THIS AGREEMENT.

I. NO ACTION, REGARDLESS OF ITS FORM, ARISING OUT OF TRANSACTIONS OCCURRING UNDER OR CONTEMPLATED BY THIS AGREEMENT, MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

14. TERMINATION. This Agreement may be terminated in accordance with the following:

A. Either party may terminate in the event of bankruptcy, insolvency, and/or an assignment for the benefit of creditors of or by either party.

B. In the event CUSTOMER fails to perform in accordance with the terms and conditions of this Agreement including, but not limited to, all addenda hereto; is so notified by ICS; and fails to cure such failure within thirty (30) days following notice, ICS may terminate this Agreement upon notice.

C. Termination of this Agreement terminates all licenses, if any, granted pursuant to this Agreement.

D. All non-disclosure, non-competition, and confidentiality provisions of this Agreement shall survive its termination.

E. In the event of termination by either party, any credits due CUSTOMER for prepayments of

maintenance covering the period after the date of termination shall be refunded to CUSTOMER within thirty (30) days from the date of termination. Any monies due ICS from CUSTOMER are due and payable within thirty (30) days from the date of termination. ICS may use any monies due to ICS to offset monies due to CUSTOMER.

- F. If ICS fails to provide the Licensed Software as warranted in accordance with the terms of this Agreement and Customer has given intent to terminate this agreement due to non-performance of warranty, then Customer may at its option terminate this Agreement with ninety (90) days written notice as follows:
- (i) The termination notice shall provide a detailed description (with examples) of any warranty defects claimed;
  - (ii) ICS shall have ninety (90) days from receipt of said notice to correct any warranty defects in order to satisfy the terms of this Agreement;
  - (iii) During the ninety (90) day cure period, Customer shall apply sound management practices and use its best efforts to resolve any issues or obstacles – including cooperating with ICS and reassigning personnel if necessary to improve the working relationship;
  - (iv) At the end of ninety (90) days unless the termination has been revoked in writing by Customer, the Agreement terminates.