

Schedule 1
Terms and Conditions

1. Introduction

These are the terms and conditions of business of **ILX Group plc** (a company incorporated in England under company number 03525870) whose registered office is One London Wall, London EC2Y 5AB ('we'; 'us'; 'our'). Unless you are notified by us in writing to the contrary, they are incorporated into and apply to all our contracts made with you for the provision of our products and services. If you are contracting with us as a living person outside of the ordinary course of your business (as a 'consumer'), these terms and conditions do not affect your statutory rights.

2. Licence

2.1 We grant to you a limited non-exclusive non-transferable licence to use the Product subject to these terms and conditions.

2.2 The Product is for your own use only and you are not entitled to distribute, sub-license or otherwise make available the Product or any of the rights granted or materials supplied by us to any other person. Where the Product is being made available for business use, you may only use them in the course of your ordinary business.

2.3 You are entitled to make one back up copy of the Product for operational security and your own use only, to be kept at all times in your sole possession and control. Such copy and any media on which it is stored must be clearly marked with our name and proprietary notices.

2.4 Any further terms and conditions relating to the licence which we grant to you will be set out in the Sales Agreement.

3. Licence Fee and Payment Terms

3.1 You are liable to us for payment of the Licence Fee which must be paid to us on or before the Payment Date.

3.2 All payments may be made by cash, cheque, credit, visa or debit card. If you are a business you may also make payment by BACS transfer to our nominated account. Details will be notified to you. We will not treat any amount as paid until we are in receipt of the full amount due to us in cleared funds.

3.3 The Licence Fee is quoted in British Pounds Sterling (£) and is exclusive of VAT unless otherwise stated in the Sales Agreement. VAT shall be paid by you at the rate and in the manner prescribed by law when payment is due.

3.4 In the event of late payment you will be liable to payment of interest accruing daily at the rate of 4% above the base rate for the time being of HSBC Bank plc from the date when payment first became due until the date of actual payment both before and after any judgement. All interest is payable to us on demand.

3.5 All charges for our further products and services are as set out in our schedule of charges from time to time or as otherwise notified to you and will, unless agreed otherwise with you in writing, be payable on demand.

4. Title and Risk

4.1 The Product is not sold to you and you will not acquire any right, title or interest in any of them other than the right to use them in accordance with the terms of our licence.

- 4.2 The Product is proprietary to us and title to both shall remain with us at all times. They are protected by intellectual property rights arising throughout the world. All intellectual property rights, including (without limitation) all copyright and database rights, in and to the Product belong exclusively to us and our licensors.
- 4.3 You will not do anything nor permit anything to be done which may harm any of the proprietary or intellectual property rights, including (without limitation) the copyright and database rights, existing at any time in the Product.
- 4.4 You will take all reasonable steps to protect and safeguard the Product from loss or damage.

5. The Customer's obligations

- 5.1 You will:
- 5.1.1 observe all these terms and conditions and all additional terms and conditions set out in the Sales Agreement;
 - 5.1.2 if a Location is specified in the Sales Agreement, keep the Product at the Location, unless we consent in writing to you moving the Product to alternative premises;
 - 5.1.3 if a Country or Countries is specified in the Sales Agreement, not use the Product nor make it available to any person outside of that Country or those Countries;
 - 5.1.4 not make available the Product to any other person and observe the User Licence or, if Permitted Users are specified in the Sales Agreement, ensure that the Product is not made available to any person other than the Permitted Users and ensure that all Permitted Users enter into and observe the User Licence;
 - 5.1.5 not use, reproduce, dispose of, deal with, rent, lease, sub-license, loan, modify, adapt, reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of the Product, except and only to the extent that we must allow you to do so by law;
 - 5.1.6 keep the Product secure and in your sole possession and control and safeguard them from access by any unauthorised person;
 - 5.1.7 not incorporate the Product into or allow it to be incorporated into any other product;
 - 5.1.8 not change, remove or obscure any labels, plates, notices, insignia, lettering, statements or markings which are on or embodied in the Product or the media on which it are held at the time of their delivery to you;
 - 5.1.9 promptly inform us in the event that you become aware of any unauthorised use of the Product and co-operate with us in taking any action which may be necessary to bring to an end any such use; and
 - 5.1.10 keep a record of all your use of and copies made of the Product and permit us, our employees and agents to enter your premises on reasonable notice to you for the purposes of inspecting the same and to verify your compliance with the terms of your contract with us.
- 5.2 Any further obligations on you not detailed in clause 5.1 or elsewhere in these terms and conditions will be set out in the Sales Agreement.

6. Term and termination

- 6.1 The Contract will continue in force for the Licence Period, unless it is terminated pursuant to this clause 6 or clause 9.5. The Contract will terminate immediately on the expiry of the Licence Period, unless it is renewed by us in writing signed by our duly authorised representative.
- 6.2 You may terminate the Contract at any time on 30 days' notice to us.
- 6.3 We may terminate the Contract immediately if you are in breach of any of its terms, save that if the breach is capable of remedy you will be allowed a period of 30 days within which to remedy the breach and only if the breach is not remedied within this period will our termination be effective. A breach by you of any terms relating to the protection of our proprietary or intellectual property rights or those of our licensors will not be considered remediable.
- 6.4 We or you may terminate the Contract by giving notice in writing if the other of us (**'the other party'**) shall have a receiver or administrative receiver appointed over any of its assets or undertaking or circumstances arise entitling a court of competent jurisdiction or a creditor to appoint a receiver or manager over the other party or if any other person takes possession of or sells any of the other party's assets or if an order is made or resolution is passed for the other party's winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or circumstances arise entitling a court of competent jurisdiction to make an order to that effect or if the other party shall become subject to an administration order or documents are filed with a court of competent jurisdiction for the appointment of any administrator of the other party or any notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying holder of a floating charge (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or the other party shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business or in the event that a petition in bankruptcy is presented against the other party or the other party is declared bankrupt or the other party shall suffer any similar or analogous action in any jurisdiction in consequence of debt.
- 6.5 Upon the termination of the Contract you will cease to use and to access and, if you are authorised to allow access to Permitted Users, procure that all Permitted Users cease to use and to access the Product and (where the Product has been supplied to you on CD-Rom or similar durable media) surrender up or (at our request) return to us the Product and all media on which they are held and you will delete all copies of the whole or any part of them in your possession or control and you will permit us, our employees and agents to enter your premises for the purposes of repossessing the same and/or verifying that the same has been done.
- 6.6 All notices must be given in writing by the person who wishes to terminate the contract sent by pre-paid first class post (or if you are resident outside of the United Kingdom by air mail equivalent) or by fax or email to the address of the person to whom the notice is to be sent which is set out in the Sales Agreement or to such other address which has been notified in advance to the person who wishes to terminate the contract by the person to whom the notice is to be sent. Where post is used, notice will be deemed to have been given 2 days after posting if you are resident in the United Kingdom and 7 days after posting if you are resident outside of the United Kingdom and where fax or email is used, notice will be deemed to have been given on the first working day (excluding Saturdays, Sundays and English Bank Holidays) after the day on which the fax or email has been sent.
- 6.7 Any termination will be without prejudice to any claim which we may have against you for any monies unpaid (including any Licence Fee) or for damages.
- 6.8 The provisions of this clause 6 and clauses 4.2, 4.3, 5.1.5, 5.1.7, 5.1.9, 5.1.10, 9, 10.2 and 12 will survive the termination of the Contract for whatever reason.

7. **Reservation of rights**

7.1 We reserve the right to recall the Product and replace it with another version or update at any time during the Licence Period.

7.2 All rights not expressly granted by us are reserved.

8. Warranty

8.1 We have obtained all necessary permissions to be able to grant to you our licence. We warrant that the Product conforms to its published specifications and indemnify you against any loss suffered directly as a result of our infringement of third-party intellectual property rights.

8.2 While reasonable care is taken to ensure that all content is accurate and complete we do not warrant or represent that the Product is free from errors or omissions.

8.3 The Product and the Documentation is supplied to you on a purely 'AS IS' basis and have not been developed to meet any specific requirements which you may have. It is your sole responsibility to satisfy yourself prior to entering into a contract with us that the Product will meet your requirements and that the Product will be compatible with any equipment on which you intend to run it.

8.4 Where the Product and/or the Documentation have been supplied to you on CD-Rom, paper or similar durable media, in the event of any inherent defect in such media being notified to us by you within 30 days of the start of the Contract, we will replace them free of charge. Our entire liability in such circumstances is to provide you with a replacement copy. We are not liable to you after the expiry of this period nor are we liable to you where the defect in the item has been caused by you.

8.5 Where the Product and/or the Documentation are hosted for you on a server maintained by us, we warrant that service downtime, excluding scheduled maintenance, will be no more than 2% of the time in any given calendar month. Service downtime is measured from the time that you notify us of unavailability of the hosted service to restoration of service. Scheduled maintenance may be carried out as required between 07:00 and 10:00 GMT on Wednesday mornings, or otherwise with 24 hours advance notice to you. We retain the right to temporarily suspend the hosted service to make any modification, change, addition to, or replacement of any part of the hosted service where this is required to conform with any applicable safety or any other statutory or legal requirements. This downtime is excluded from the service levels outlined above. We only have control over network availability onto the public Internet. Network connectivity between your site and our hosting partner network are beyond our reasonable control and cannot be guaranteed. Any failure of the hosted service due to Force Majeure is excluded from the service levels.

8.6 You warrant that you have not been induced to enter into the Contract by any statement, representation or warranty however made by us before the Contract Date and not contained in these terms and conditions or in the Sales Agreement and you will not make any allegation, claim or bring any action against us arising from any such statement, representation or warranty, but you are not prevented by this clause from making any allegation, claim or bringing any action against us that we made a representation to you fraudulently and you entered into the Contract in reliance on it.

9. Liability

9.1 You use the Product at your own risk and in no event will we be liable to you for any loss or damage of any kind (including any indirect or consequential losses, such as loss of data, profits, revenue, turnover, sales, production, anticipated savings, goodwill, business opportunities, contracts or any other economic loss) arising from your use of or your inability to use the Product or from faults or defects in either, whether caused by negligence or

otherwise, save that our liability is not excluded by this clause where personal injury or death is shown to have been caused by our own negligence or that of our employees or sub-contractors.

- 9.2 The terms set out in the Sales Agreement and those set out in these terms and conditions supersede and replace all warranties, conditions, undertakings, terms and obligations which may be implied by statute, common law, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.
- 9.3 Save in respect of personal injury or death which is shown to have been caused by our own negligence or that of our employees or sub-contractors, save in respect of intellectual property infringement indemnification, and save in respect of any liability which we may have to you arising from any pre-contractual representation which we are shown to have made to you fraudulently and on which you relied to enter into the Contract, our total liability to you is limited to the amount of the Licence Fee paid by you.
- 9.4 Where the Sales Agreement allows use of the Product by Permitted Users, you are responsible for all such use and you will protect and hold us harmless against and fully indemnify us in respect of all and any loss, costs, claims, demands, expenses and liabilities arising out of such use.
- 9.5 Neither you nor we will be liable to the other of us where you or we are delayed from performing any of our duties, responsibilities or obligations under the Contract by reason of any circumstances beyond our reasonable control, including (without limitation) flood, fire, adverse weather conditions, war or threat of war, industrial action, commotion, terrorism, computer malfunction, delays and disruption to the internet, unforeseeable technical problems, transport problems, closure of ports, closure of airports, airspace or territorial borders and any delay caused by any act or omission of the other party. If the delay continues for more than 30 days then either of us may terminate the contract immediately on notice to the other without further liability, save for liability already accrued prior to the date of termination, including in particular for any monies then due which have not yet been paid.

10. Third Parties

- 10.1 The Contract is personal to you. Unless provided for in writing in the Sales Agreement, you are not permitted to assign, sub-license, sub-contract or otherwise transfer the contract made between us or any part of it or any of the rights granted to you by it or the performance of any of your obligations under it whether in whole or in part to any other person without our prior consent in writing.
- 10.2 The Contracts (Rights of Third Parties) Act 1999 does not apply to the Contract. This means that, although other persons may derive benefit from it, no person other than you (being the person who is named as the Customer in the Sales Agreement) or us may bring any action under it or enforce any of its terms.

11. General

- 11.1 In these terms and conditions: "Sales Agreement" means our further contractual documentation provided to you by us setting out the details of the Product, any additional services which we have agreed to provide and any additional terms and conditions; "Contract Date" means the date entered by us at the top of the Sales Agreement; and "Contract", "Product", "Licence Fee", "Licence Period", "User Licence", "Location", "Country/ies" and "Permitted Users" have the meanings set out in the Sales Agreement, save that the word "Product" includes any modified or replacement versions of them made available to you by us at any time pursuant to our contract with you.
- 11.2 The Sales Agreement and these terms and conditions supersede all prior agreements, arrangements and understandings between us and constitute the entire agreement between

us relating to the subject matter of the contract, save that we do not seek by this clause to exclude any liability for any fraudulent pre-contractual misrepresentation upon which the other of us can be shown to have relied.

- 11.3 The Sales Agreement may not be amended except in writing signed by our duly authorised representative. These terms and conditions may be amended from time to time by notice to you. Our terms and conditions are also periodically updated (for example, to meet changes in legal and regulatory requirements). Although we will endeavour to notify you in writing where amendments are made to our terms and conditions, notice will be deemed to have been given by our posting our revised terms and conditions on our website at www.ilxgroup.com/legal/softwareterms.htm. Any changes will not however be binding on you until a period of 28 days has elapsed after posting. You are advised to visit our website periodically to check our latest terms and conditions.
- 11.4 If any of the terms of the Contract shall become or is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable then such terms shall be severable and deemed to be deleted and the remaining terms shall remain in full force and effect.
- 11.5 Failure by either you or us to exercise any right or remedy which is available will not constitute a waiver of that right of remedy and will not preclude you or us exercising that right or remedy in the future whether in relation to the same or any other cause of action.

12. Governing Law

- 12.1 The Contract, these terms and conditions and the further terms and conditions set out in the Sales Agreement shall be governed by and construed in accordance with English Law and any dispute which cannot be amicably resolved between us relating to any of them will normally be determined by the English Courts, without reference to conflict of law principles.