



Adactus Terms and Conditions

CONDITIONS FOR THE SUPPLY OF CONSULTANCY AND OTHER TECHNICAL SERVICES

These Conditions shall apply to all contracts for the supply by Adactus Limited ("Adactus") of consultancy systems specifications, bespoke programming and other technical services.

1 DEFINITIONS

In these Conditions the following expressions shall (where the context so admits) have the following meanings:-

"Technical Services"	means the consultancy systems specification, bespoke programming or other technical services to be provided by Adactus as detailed in the Quotation.
"Timetable"	means the timetable within which Adactus will perform the Technical Services and which is specified in the Quotation and shall include any revisions to the Timetable made in accordance with Clause 3.3.
"Price"	means the price to be paid by the Client for the Technical Services and which is specified in the Quotation.
"Client"	means the recipient of Technical Services from Adactus
"Quotation"	means the quotation for the Technical Services submitted by Adactus to the Client.
"Contract"	means the contract between Adactus and the Client entered into subject to these Conditions for the provision of the Technical Services, comprising the Quotation (including the Specification) and the Client's acceptance thereof.
"Working Hours"	means the hours between 09.00 to 17.30 on Mondays to Fridays except English public holidays.
"Specification"	means the description, specifications and other details of the Technical Services set out, or incorporated by reference in, the Quotation.
"Stage"	means the numbered stages (if any) for the performance of the Technical Services described in the Timetable.
"Programs"	means the software programs to be designed and written by Adactus in accordance with the terms of the Quotation.

2 FORMATION OF CONTRACT

- 2.1 Any order sent to Adactus by the Client shall be accepted entirely at the discretion of Adactus, and, if so accepted, will only be accepted upon these Conditions.
- 2.2 Each order which is so accepted shall constitute an individual legally binding contract between Adactus and the Client.
- 2.3 These Conditions (together with special terms, if any, set out in the Quotation which special terms shall take precedence over these Conditions) shall constitute the entire understanding between the parties relating to the provision of the Technical Services, and shall supersede any previous communication, representation or agreements by either party whether oral or written. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. Nothing in these Conditions excludes either party's liability for fraud. In the case of conflict between these Conditions and the Specification these Conditions shall prevail. No change to any of the Conditions shall be valid unless in writing and signed by an authorised representative of each party.
- 2.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2.5 In these Conditions the singular includes the plural and vice versa.

3 AVAILABILITY OF TECHNICAL SERVICES

- 3.1 All performance and completion dates given by Adactus (including for the avoidance of doubt the dates specified in the Timetable) are estimates only and the time for the performance or completion of the Technical Services shall not be of the essence of the Contract. Accordingly Adactus accepts no responsibility or liability, financial or otherwise, in the event that the Timetable is not complied with. In particular, Adactus shall not be liable to reimburse the Client in respect of any payments for delay, liquidated or other damages which the Client may suffer as a result of delay by Adactus whether or not Adactus is aware of the Client's potential liability.

3.2 The Technical Services shall be performed or (as the case may be) made available during Working Hours only. If the Client requires performance or availability outside Working Hours then (subject to acceptance by Adactus) an additional charge shall be payable at Adactus's standard rates in force from time to time.

3.3 Without prejudice to Clause 3.1, Adactus shall use its reasonable endeavours to notify the Client of any delay in the Timetable for the provisions of Technical Services, and to propose a revised Timetable to the Client. Any onward notification of such delay to customers of the Client shall be the sole responsibility of the Client. Contracts may be divided into Stages. At the end of each Stage, Adactus will give the Client a written estimate of the likely cost of completing the next Stage. The Client then has the right not to proceed to the next Stage.

4 FORCE MAJEURE

4.1 Adactus shall not have any liability in respect of any delay in carrying out or failure to carry out any of its obligations under the Contract caused by:-

4.1.1 fire, strikes or other industrial action or dispute, acts of Government, default of suppliers or sub-contractors, or

4.1.2 any circumstances outside the reasonable control of Adactus; or

4.1.3 difficulties in development which could not reasonably have been foreseen;

4.1.4 any other occurrence which makes it reasonable to extend the development time.

4.2 Without prejudice to Clause 3.1, Adactus shall have the right to extend the estimated delivery schedule as set out in the Timetable by a period of time sufficient to take due account of the event occurring as set out in Clause 4.1. If however such extension continues for a period of six months the Client may on the expiry of that period terminate the Contract forthwith without liability to Adactus other than reimbursement on the same terms as provided in Clause 3.3.

5 PRICES AND PAYMENT

5.1 Prices for the provisions of the Technical Services will be those set out in the Quotation.

5.2 Unless otherwise stated in the Quotation, Adactus shall be entitled to invoice the Client under the Contract at the end of each month for work undertaken or completed by Adactus on the Contract during that month. Payment of all Adactus invoices shall be made in Pounds Sterling within fourteen (14) days of the invoice issue date. At the request of the Client, Adactus shall issue with all invoices submitted to the Client under this Condition a statement of the work carried out by Adactus to which the invoice refers. Where chargeable, Value Added Tax and any other applicable taxes or duties shall be added to the invoices at the current rate or rates in force at the relevant times

5.3 The time for payment shall be of the essence of the Contract.

5.4 If the Client fails to make any payment to Adactus on the due date then without prejudice to any other right or remedy available to Adactus, Adactus shall be entitled to:-

5.4.1 terminate the whole or any part of the Contract (in accordance with the provisions of Clause 12) or suspend the performance or further performance of its obligations under the Contract;

5.4.2 appropriate any payment made by the Client to such of the Technical Services (or the products and services supplied under any other contract between Adactus and the Client) as Adactus may think fit;

5.4.3 charge the Client interest (both before and after judgement) on the amount outstanding on a daily basis, at the rate of 2 per cent per annum above the base rate of Barclays Bank Plc, such interest to be calculated from the due date to actual payment (both dates inclusive) compounded quarterly;

5.4.4 withhold delivery of the Programs and any related deliverables.

6 LIMITATION OF LIABILITY

6.1 Adactus does not seek to limit or exclude any liability of Adactus for death or personal injury where that liability arises from its negligence.

6.2 Adactus's liability to the Client for loss of, damage to, or injury to property (other than goodwill, data, programs and other electronic records or intellectual or intangible property) in respect of any single claim or series of claims in respect of the same act, omission or circumstance arising from Adactus's negligence, misrepresentation, breach of contract or other fault shall not in

any circumstance exceed the greater of £1,000,000 (one million pounds) or the sum equal to the aggregate of the amount or amounts payable by the Client under the Contract or Contracts (if any) to which the liability relates.

- 6.3 The Client shall be responsible for maintaining complete and up to date reproducible and accurate backup copies of all data, programs and other electronic records held by Client or held by Adactus on the Client's behalf. Subject to Clause 6.1 above , any liability of Adactus for loss of the Client's data, programs or other electronic records shall be limited to the cost of reloading the Client's backup copies.(if any)
- 6.4 Except as provided under Clause 10 below and this Clause 6 any liability of Adactus to the Client however that liability may arise, shall be limited to the greater of [£10,000] ten thousand pounds or the sum equal to the aggregate of [/105% of]the amount payable by the Client under the Contract or Contracts to which the liability relates.
- 6.5 The Client shall indemnify Adactus against all third party claims relating to Programs and Technical Services supplied to the Client where these claims are based on negligence or other alleged fault by the Client.
- 6.6 In no circumstances shall Adactus be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof:-

6.6.1 for any increased costs or expenses or

6.6.2 for any special indirect or consequential damage of any nature whatsoever (including loss of anticipated savings, loss of profit, revenues, contracts, goodwill and business) arising directly or indirectly out of the provisions by Adactus of the Technical Services, or of any error or defect therein, or of the performance, non-performance or delayed performance by Adactus of the Contract whether from negligence, misrepresentation or from other fault of Adactus or any other person for whom Adactus may have responsibility or arising from breach of any contract between Adactus and the Client.

7 RECRUITMENT OF STAFF

- 7.1 Each of Adactus and the Client hereby undertakes to the other that unless it has the prior written consent of the other party during the continuance of the Contract and for a period of six months following its termination or completion it will not directly or indirectly, either on its own behalf or on behalf of any other person:
- 7.1.1 solicit or endeavour to entice away from or discourage from being employed by the other party the employees of that other party met or introduced as a result of discussions, negotiations and other communications between them relating to the Technical Services and/or the Contract; or
- 7.1.2 induce any employee of the other to leave his employment; or
- 7.1.3 engage or employ any individual employed by the other party met or introduced as a result of discussions, negotiations and communications between them relating to the Technical Services and/or the Contract.
- 7.2 Each of Clauses 7.1.1 to 7.1.3 above shall be treated as a separate obligation and shall be severally enforceable as such.
- 7.3 The parties consider the restrictions in Clause 7.1 to be fair and reasonable, but if a court of competent jurisdiction finds any of them to be unenforceable the parties agree to negotiate in good faith any modification as to the extent or duration of the restriction concerned which is reasonably necessary to render the restrictions enforceable.

8 CONFIDENTIAL INFORMATION

- 8.1 Each party undertakes to the other party in relation to the information of one party (the "disclosing party") which is made available to the other party (the "receiving party") in relation to this Contract ("the Confidential Information"):-
- 8.1.1 to maintain the same in confidence and to use it only for the purposes of the Contract and for no other purpose and in particular, not to make any commercial use thereof or use the same for the benefit of itself or of any third party other than pursuant to the Contract or a further contract with the disclosing party;
- 8.1.2 not to copy, reproduce or reduce to writing any part thereof except as may be reasonably necessary for the said purposes and that any copies, reproductions or reductions in writing so made shall be the property of the disclosing party;
- 8.1.3 not to disclose the same except to its employees on a need to know basis; and
- 8.1.4 to apply no lesser security measures and degree of care to the Confidential Information than those which the receiving party applies to its own confidential or proprietary information.
- 8.2 Neither party shall be required to treat as confidential any information which:-
- 8.2.1 was already known to it prior to its receipt from the disclosing party;

- 8.2.2. was in the public domain at the time of receipt by the receiving party or subsequently entered into the public domain other than by reason of the breach of these Conditions or of any obligation of confidence owed by the receiving party or its agents or sub-contractors to the disclosing party;
- 8.2.3. was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the disclosing party; or
- 8.3. The provisions of this clause shall survive termination of these Conditions.

9 ALTERATIONS TO THE CONTRACT

- 9.1 If at any time during the currency of the Contract the Client wishes to alter the Technical Services to be provided by Adactus under the Contract then the Client shall provide Adactus with full written particulars of such alterations and with such further information as Adactus may reasonably require.
- 9.2 Adactus shall then (at its option) either:-
- 9.2.1. submit to the Client as soon as reasonably practicable a written quotation for such alterations specifying what changes (if any) will be required to the terms of the Contract; or
- 9.2.2. inform the Client that Adactus does not agree to make such alterations (without being obliged to give any reason therefor) in which case the Contract shall continue in force unchanged subject to Clause 9.4.
- 9.3 Upon receipt of a quotation under Clause 9.2.1 the Client may elect either:-
- 9.3.1. to accept such quotation in writing in which case the Contract shall be amended in accordance therewith; or
- 9.3.2. to withdraw the proposed alterations in which case the Contract shall continue in force unchanged (subject to Clause 9.4).
- 9.4 Adactus shall be entitled to make a reasonable charge on a time and materials basis for considering such alterations and (where applicable) preparing the said quotation and if such activity results in a delay in the performance of the obligations of Adactus under the Contract then Adactus shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.
- 9.5 Adactus shall not be obliged to consider or make any alterations to the Contract except in accordance with the above procedure.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 The copyright and all other intellectual property rights of whatever nature including any letters patent, copyright, registered or unregistered design right, utility model, (the "Proprietary Rights") in all work which has been or will be developed by Adactus in the performance of its obligations under the Contract shall be and shall remain vested in Adactus. Where Adactus creates Programs for the Client Adactus hereby undertakes to grant the Client from the time of acceptance of that Program the non transferable [royalty free] Program licence solely for the Client's own internal business purposes.
- 10.2 The Client hereby grants Adactus a non-exclusive, world-wide, royalty-free licence to the Client's pre-existing Proprietary Rights to the extent necessary for Adactus to perform its obligations under the Contract and will indemnify Adactus fully and hold Adactus harmless against any breach of this Condition and any loss, cost, claim, expense or damage which may arise from use by Adactus of the Client's pre-existing Proprietary Rights.
- 10.3 The Client warrants that it is able to grant Adactus all necessary rights and licences in respect of any third party Proprietary Rights licensed to the Client to the extent necessary for Adactus to perform its obligations under the Contract and will indemnify Adactus fully and hold Adactus harmless against any breach of this Condition and any loss, cost, claim, expense or damage which may arise from use by Adactus of any third party Proprietary Rights.
- 10.4 All documentation, educational material, Programs and all other written information in any form, including electronic, provided by Adactus during supply of the Technical Services are protected by Adactus copyright. All such materials are provided for the sole use of the Client and may not be copied or reproduced in any form without the prior written consent of Adactus. All authorised copies shall carry Adactus's approved copyright notice.
- 10.5 Adactus will indemnify the Client against any claim for alleged infringement of any third party Proprietary Right effective in the United Kingdom by the use or possession of any part of the Programs provided that Adactus is given immediate and complete control of any such claim, and that the alleged infringement does not arise from Adactus following any instruction given by or on behalf of the Client, and is not based upon use of the Programs in combination with any equipment, software or devices not supplied by Adactus or in a manner for which the Programs were not designed. If, in such event, a final injunction is obtained against the use of any part of the Programs by reason of such third party Proprietary Rights, Adactus shall, at its option and

expense, either procure for the Client the right to continue to use the Programs or modify the Programs so that they become non infringing or remove the Programs and grant the Client a credit for the price paid less depreciation of 25% thereof per year from the date of acceptance. The foregoing states Adactus's total liability for infringement of third party Proprietary Rights.

11 WARRANTIES

- 11.1 Adactus shall provide the Technical Services in a professional manner and with reasonable skill and care. In the event that the Client provides written evidence to Adactus within [three] months of the performance of a Technical Service (excluding Technical Services covered by the warranty in Clause 11.3) that the same has not been performed to this standard then Adactus shall re-perform such defective Technical Service at Adactus's expense.
- 11.2 Adactus shall not be responsible for any business decisions made, or actions taken by the Client based on any part of the Technical Services.
- 11.3 The warranty for any Programs created which have been accepted by the Client is contained in the Program licence [set out in Annexe A]

12 TERMINATION

- 12.1 Adactus may (without limiting any other remedy) at any time terminate the Contract forthwith by written notice:
 - 12.1.1. if the Client commits any material breach of the Contract and fails to remedy the breach within thirty (30) days after being required by written notice to do so; or
 - 12.1.2. If the Client fails to pay any sums by the due date (without prejudice to any other provision relating to late payment)or
 - 12.1.3. In the case of the Client being an individual or firm the Client becomes bankrupt, makes a voluntary arrangement with its creditors or if the Client (being a company) becomes subject to an administration order or goes into liquidation (other than for the purposes of amalgamation or reconstruction), or has a receiver or administrator appointed or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;or
 - 12.1.4. an encumbrancer takes possession of, or a receiver is appointed in respect of any of the property or assets of the Client; or
 - 12.1.5. the Client ceases, or threatens to cease to carry on business
- 12.2 Upon termination the Client shall pay Adactus for all Technical Services performed (on a time and materials basis according to Adactus's then current Price List) and charges (including any cancellation charges of Adactus's sub-contractors or suppliers) incurred by Adactus up to the date of termination and shall return to Adactus all copies of documentation in its possession..
- 12.3 Upon termination all provisions of this Clause 14 shall remain in force.

13 TERMINATION

- 13.1 With respect to any computer programming services set out in the Quotation which result in the creation by Adactus of Programs to the Client:-
 - 13.1.1.the Client shall be responsible for all testing of the Programs once they have been installed on the Client's equipment;
 - 13.1.2.the Client shall by written notice to Adactus within seven days after each Program has been installed on its equipment either accept or reject the same. The Client shall only be entitled to reject a Program upon the basis that (and by detailing the manner in which) the Program does not operate substantially in accordance with the Specification. The Client shall be deemed to have approved a Program if the Client neither approves nor rejects the same within the said seven days after installation or if the Client puts the program into productive use.
 - 13.1.3.Adactus shall within a reasonable time of receiving any notice of rejection pursuant to Clause 13.1.2 above make all such alterations to the rejected Programs as shall in the circumstances be necessary and shall re-submit the same for approval by the Client. The provisions of Clause 13.1.2 and this Clause 13.1.3 shall apply mutatis mutandis until such time as the Client shall approve (or be deemed to approve) the Programs provided that if the Client rejects the Program on the third occasion then the Program shall be treated as permanently rejected by the Client, Adactus shall have no further obligation to carry out further Technical Services in relation to the Program and shall Adactus's sole liability will be to reimburse the Client for any charges paid in relation to the development of the Program.

14 CLIENT'S OBLIGATIONS

- 14.1. The Client will:

- 14.1.1 promptly furnish Adactus with such full and accurate information and documents as Adactus may reasonably request for the proper performance of its obligations under the Contract;
- 14.1.2 ensure that its employees co-operate fully with Adactus;
- 14.1.3 make available to Adactus such office and secretarial services at the Client's premises as may be necessary for the proper performance by Adactus of its work under the Contract.
- 14.1.4 upon becoming aware of any wrong assumption made by Adactus promptly notify Adactus.

15 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

These Conditions and this Contract are made solely and specifically between Adactus and the Client for their benefit and are not intended to be for the benefit of and shall not be enforceable by any person other than the parties hereto under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16 MISCELLANEOUS

- 16.1 Adactus may provide the same or similar services to other customers.
- 16.2 The Client may not assign any of its rights or obligations without Adactus's prior written consent.
- 16.3 Adactus shall be entitled to sub-contract the performance of the whole or any part of the Contract without prior notice to the Client.
- 16.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.
- 16.5 Adactus's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- 16.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity or enforceability of the other provisions of these Conditions and the remainder of any provision in question shall not be affected.
- 16.7 These Conditions and the Contract shall be governed and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts for the settlement of all disputes or claims which may arise out of or in connection with the Contract.