

SAP Business One Software Licence & Maintenance Terms & Conditions



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INTRODUCTION:

- A. These Terms and Conditions are to be reviewed along with the SAP Business One Software Licence and Maintenance Contract, which is between ISB Global Limited and a specific Customer.
- B. ISB wishes to grant to the Customer, and the Customer wishes to accept, a licence to use certain software on the terms set out in this Agreement. The usage authorised by this Agreement is set out in the Schedule; this may increase over time by means of further Schedules being signed.
- C. This licence will enable the Customer to permit both use of the software by Group Companies and Outsource Providers and access to it by Supply Chain Third Parties on certain conditions.
- D. The licence fees are calculated on the basis of: user fees; fees for supplementary software products and database fees. A global pricing adjustment applies to users and supplementary software instances in certain countries.

IT IS AGREED:

1. Definitions/Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”: this Software Licence and Maintenance Agreement together with the Schedules, the Schedule and any licence applying to database software licensed from ISB (see clause 3.6).

“Confidential Information”: the following information (whether it is conveyed orally, in writing, on electronic data media or in any other manner):

- (a) the commercial terms of this Agreement;
- (b) trade secrets and know-how (including the concepts, techniques and ideas embodied in the Software and the structure, sequence and organisation of the Software);
- (c) technical data or specifications, commercial information or data or ideas belonging to the

disclosing party or its licensors or relating to the business or affairs of the disclosing party or its licensors, the release of which could be injurious to the disclosing party or its relevant licensor or advantageous to its/their rivals or to others; and

- (d) any other information which the recipient ought reasonably to know is confidential in light of the usage and practice of the industries in which the disclosing party is involved.

“Documentation”: the descriptions accompanying the Software in machine-readable form and all updates thereto supplied as part of the warranties and maintenance services.

“Enhancement”: new code that is connected to the Software and has been created using the development and administration tools contained within the Software.

“Schedule”: the Schedules issued with this Agreement plus any further Schedules which reference this Agreement.

“Group Company”: any company in which the Customer owns or controls a majority of the voting rights at the general meetings of that company.

“IPR”: all intellectual property rights arising by virtue of or in relation to copyright, database rights, patents, trade marks (registered or unregistered), applications for any of the foregoing, trade secrets and know-how and any other similar rights in any country.

“Modification”: an adaptation of the Software (e.g. a change made to the source code) using the development and administration tools contained within the Software. Configuration of the Software does not constitute a Modification.

“Named User”: an individual representative (e.g. employee, agent, consultant, contractor) of the Customer, a Group Company, an Outsource Provider or a Supply Chain Third Party who is authorised to access the Software directly or indirectly (e.g. via the Internet or by means of a hand-held or third party device or system). The extent to which a Named User is authorised to use the Software depends upon his user category as set out in the Schedule.

“Outsource Provider”: any third party whose identity has been approved by ISB pursuant to clause 3.8.

“SAP”: means SAP (UK) Limited (Company No 2152073).

“SLMC”: means SAP Business One Software Licence and Maintenance Contract.

“Software”: the software set out in the Schedule together with any software provided as part of warranty and maintenance service.

“Supply Chain Third Party”: a third party that requires access to the Software in connection with the operation of the business of the Customer and/or its Group Companies (e.g. customers, distributors and suppliers).

“Third-party Software / Products” non-SAP Software which ISB is entitled to market, distribute and sub-license hereunder.

“Working Day”: any weekday other than a statutory, bank or

public holiday.

1.2 Interpretation

1.2.1 The clause references in this Agreement are references to the relevant clauses in this Agreement.

1.2.2 The clause headings are for ease of reference and are not intended to influence the meaning of this Agreement.

1.2.3 A reference to a statute (or a section of a statute) shall include any modification or re-enactment in force from time to time and any statutory instrument or regulations made under the relevant statute.

1.2.4 Any phrase introduced by "including", "in particular", "e.g." or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Export/Delivery/Installation

The Software is subject to various export control regulations, including those of Germany, England and the USA, which may apply not just to the initial export but also to any re-export (including to a Group Company). Electronic transfer of the Software can constitute export as well as any physical shipping of data media. The import and use of the Software in the country of destination may also be restricted or banned by national law of that country. The Customer shall comply with all relevant export and import regulations affecting the Software and shall indemnify SAP and its licensors against all losses, costs and expenses arising out of non-compliance. Subject to the need to comply with those regulations and to clause 3.11, ISB shall, via electronic download and free on board delivery if required, deliver one copy of the then current release of the Software and the Documentation to the Customer following execution of this Agreement and receipt by ISB of the written details of the equipment upon which the Customer will install the Software and the delivery location.

3. Licence

3.1 Subject to clause 14, ISB grants to the Customer a non-exclusive and perpetual licence to use the Software and Documentation.

3.2 The authorised usage of the Software is set out in the Schedule A. The Customer shall inform ISB promptly if its usage is beyond that set out in the Schedule A, in which case additional licence and maintenance fees will become payable in accordance with clause 6.2.

3.3 Programs other than the Software may be included on the media on which the Software is shipped by ISB but the Customer is not licensed to access or use those other programs, even if it is technically possible for it to do so.

3.4 The Software and Documentation may only be used for the Customer's internal business transactions and those of its Group Companies; the Customer is not permitted to use the Software and Documentation to undertake computer centre or service bureau operations, application service provision, managed services or similar activities.

3.5 The Software may not be used to operate power stations, mass transit applications or for any direct medical application.

3.6 Where the Customer is licensing third party database software from ISB, additional terms imposed by the

relevant manufacturers may apply to its use and in such circumstances the Customer must sign the respective database licence before using such software. In the event that Customer enters into any financing or leasing agreement in relation to the Software, Customer's right to use the Software, and to receive maintenance services, may (pursuant to the terms of any such financing or leasing agreement) be subject to the Customer complying with its obligations under such financing or leasing agreement.

3.7 The Software may only be installed on equipment written details of which (including details of the location) have first been given to ISB and which is located at premises owned or controlled either by the Customer or a Group Company or an Outsource Provider. Refer to Schedule A.

3.8 In connection with a disaster recovery, outsourcing or facilities management arrangement, the Customer may appoint a third party to host and/or operate the Software on its behalf in accordance with the terms of this Agreement:

3.8.1 provided ISB has given its prior written approval to the identity of that third party, such approval not to be unreasonably withheld or delayed;

3.8.2 provided the Software and Documentation remain under the Customer's control; and

3.8.3 provided there is no novation or assignment of this Agreement by the Customer in favour of the Outsource Provider.

3.9 The Customer shall be responsible for the acts and omissions of Outsource Providers as if they were the Customer's acts and omissions.

3.10 Subject both to clause 3.11 and to the further condition that, Named Users specified in any Licence Type in section 4 of Schedule A may not be allocated or re-allocated, unless discussed and agreed with ISB, the Customer may set up any number of live instances of the Software (or any of its components) and up to five non-productive instances for each live instance. Non-productive instances shall be used solely for the purposes of development, testing and internal training. (One instance is the sum of all components of the Software that access or interoperate with, either directly or indirectly, a single database, i.e. a database that does not contain any database table more than once.)

3.11 Subject to clause 2, instances of the Software (whether live or non-productive) may be located anywhere in the world except for territories where ISB reasonably believes that its IPR in the Software and Documentation or those of its licensors may be unenforceable.

3.12 A Named User's password may only be used by or passed on to another person in exceptional circumstances (e.g. if the Named User has left or is absent from work due to extended illness or vacation).

3.13 The Customer is permitted to create back-up copies of the Software in accordance with good technological practice.

3.14 The Customer is permitted to copy the Software to set up new instances (both live and non-productive) and to copy the Documentation as required for purposes ancillary to the permitted use of the Software under this Agreement. The copyright and other IPR notices that appear in the programs and on the original media on which the Software and

- Documentation were delivered shall be reproduced on all copies.
- 3.15 The Customer shall not decompile or disassemble any part of the Software or attempt to do so unless permitted by s.50B, Copyright, Designs and Patents Act 1988. Prior to carrying out any decompilation or disassembly permitted by that statutory provision, the Customer must first ask ISB to provide the information necessary to produce interoperability and only if ISB fails to do this within a reasonable period of time, may the Customer proceed to rely on s.50B.
- 3.16 The Customer may authorise Group Companies to use the Software and Documentation in accordance with the terms of this Agreement but the Customer shall be responsible for the acts and omissions of Group Companies as if they were the Customer's acts and omissions.
- 3.17 A Group Company's right of use shall terminate as soon as it ceases to be a Group Company and then the procedure set out in clause 14.2.2 shall be followed to the appropriate extent with the certificate being given by the Customer.
- 3.18 The Customer may authorise Supply Chain Third Parties to access the Software within the following bounds:
- 3.18.1 usage by Supply Chain Third Parties shall be classified in the same manner as usage by the Customer and Group Companies (e.g. numbers and categories of Named Users and supplementary software product usage);
- 3.18.2 Supply Chain Third Parties shall have no access to the source or object code of the Software;
- 3.18.3 Supply Chain Third Parties may only use the Software for the internal business transactions of the Customer and its Group Companies;
- 3.18.4 the Customer shall be responsible for the acts and omissions of Supply Chain Third Parties as if they were the Customer's acts and omissions.
- 3.19 During the first month of each calendar quarter, the Customer shall, using the tools provided by ISB, generate from each instance of the Software and deliver to ISB the information necessary to check that usage of the Software corresponds with the Schedule. If Customer fails to do so then the Customer shall permit ISB reasonable direct and/or remote access to the Software and the equipment on which it is installed to verify usage. In so doing, ISB shall comply with the Customer's reasonable security requirements. If usage is discovered which does not correspond to the Schedule, additional licence and maintenance fees will become payable as referred to in clause 6.2.
- 4. Development**
- 4.1 ISB is not authorised to grant permission to adapt non-SAP software (e.g. the database software) and the Customer acknowledges that nothing in this clause 4 authorises it to do so.
- 4.2 To the extent that the Software contains development and administration tools, Developer Users and DW Users (as defined in the Schedule) may use those tools to modify, enhance, deploy and manage the Software or third-party applications or for the purpose of creating, modifying, enhancing, deploying and managing custom-developed applications provided they do so without making any unauthorised decompilation or disassembly. The tools may not be transferred, either in whole or in part, into Modifications, Enhancements, third-party or custom-developed applications.
- 4.3 The Software contains function modules that are stored in a function library. Some of these function modules carry a release indicator for transfer into Modifications or Enhancements and it is only these function modules that may be transferred into Modifications or Enhancements. None of the function modules may be adapted, decompiled or disassembled.
- 4.4 If the Customer wishes to carry out a Modification or Enhancement, it must first obtain a developer's key from SAP AG. The Customer shall own all newly-created IPR in Modifications and Enhancements undertaken solely by the Customer but SAP shall be entitled to obtain the exclusive transfer of those rights to SAP or any of its licensors in return for a suitable remuneration; in this case, the Customer will retain the same rights to the Modifications and Enhancements as it has to the Software under this Agreement.
- 4.5 Where any Modifications or Enhancements are carried out by ISB, in part or in whole, the Customer will have the same rights to those Modifications and Enhancements as it has to the Software under this Agreement. All other rights shall be due exclusively to SAP and its licensors.
- 4.6 Whilst all IPR in the development and administration tools and the function modules contained within the Software are and shall remain vested in SAP and its licensors, ISB claims IPR in custom-developed applications created using those tools or function modules or in such applications or third-party applications that the Customer requests, deploys, manages or modifies using those tools or function modules.
- 4.7 SAP and the Customer acknowledge that ISB undertakes SAP Development activities to provide vertical Add On solutions. The IPR related to such Add On developments belongs to ISB.
- 4.7 Nothing in this Agreement shall restrict the development activities of SAP and its licensors in any way.
- 4.8 The Customer uses the development and administration tools and function modules at its own risk. The Customer acknowledges that major, unforeseeable malfunctions may occur in the Software or other programs, as a result of carrying out Modifications or Enhancements, which may affect use, operating security, warranty and maintenance services.
- 4.9 It shall be the Customer's sole responsibility to maintain compatibility between Enhancements, Modifications, the configuration of the Software, third party and custom developed applications and devices and subsequent releases of the Software.
- 5. Title and Rights**
- All IPR in the Software and the Documentation are and shall remain vested in SAP and its licensors. Except to the extent expressly permitted by this Agreement or by law, all copying, distribution, rental, adaptation, decompilation and disassembly of the Software and the Documentation is prohibited.
- 6. Fees/Payment**
- 6.1 Except as set out in clause 6.2, the licence fee payable under each Schedule shall be paid by the Customer (and received by ISB) within 30 days of the

- date of the SLMC. The associated maintenance fees shall also be paid by the Customer (and received by ISB) within the same period for the balance of the then current calendar year and after that shall be payable annually in advance being invoiced on 1st January and paid by the Customer (and received by ISB) by 31st January of each year.
- 6.2 Without prejudice to any other rights and remedies of or available to ISB, if usage of the Software does not correspond to Schedule A, additional licence and maintenance fees calculated in accordance with SAP's then current price list shall be due from the date on which the unauthorised usage was first identified. The Customer shall promptly sign and return to ISB a further Schedule that ISB shall prepare detailing the relevant usage and fees but ISB's right to receive payment of those fees shall not be dependant upon signature of this Schedule.
- 6.3 All fees are exclusive of Value Added Tax or any similar sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law. All fees due under this Agreement shall be paid in full without any deduction or withholding other than as required by law and the Customer shall not be entitled to assert any right of set-off against ISB in order to justify withholding payment of any fees. The Customer agrees that late payments shall be treated as qualifying debts under the Late Payment of Commercial Debts (Interest) Act 1998 and, as such, attract simple interest if not paid on time.
- 7. Customer Responsibilities**
- 7.1 The Customer shall take all reasonable precautions:
- 7.1.1 against the possibility that the Software, or any component of it, should not function properly (e.g. data back-ups, error diagnosis and regular results monitoring); and
- 7.1.2 to safeguard the Software and the Documentation (in particular, any source code and related documentation that has been made available to the Customer) to prevent its misuse.
- 8. Warranties**
- 8.1 SAP's start-up procedure, including the procedure for the issue of licence keycodes, must be followed each time the Software is installed. Failure to follow this procedure will cause the Software to have limited user access and may affect the performance of the Software.
- 8.2 ISB warrants in relation to the Software which is first delivered immediately following the signature of this Agreement that for six months from the date of such delivery, when operated in accordance with the terms of this Agreement and the Documentation, the Software shall:
- 8.2.1 substantially conform to the Documentation;
- 8.2.2 be capable of satisfying the legal requirements applicable to the euro as set out in EC Regulation number 1103/97, recognise the industry standard keyboard configurations or key-strokes and screen layouts for the euro symbol and perform all of its monetary functions in euro.
- 8.3 ISB warrants that the troubleshooting and proactive remote services to be performed as part of maintenance services pursuant to clause 10 shall be performed with reasonable skill and care.
- 8.4 ISB does not warrant that the Software will operate uninterrupted or that it is designed to meet all local requirements.
- 8.5 The warranties in clause 8.2 shall not apply to the extent that any defect is caused either by a Modification or an Enhancement carried out by someone other than ISB or its licensors.
- 8.6 The Customer acknowledges that the Software has not been prepared to meet the Customer's individual requirements and that it has been the responsibility of the Customer to ensure that the Software is appropriate for its requirements.
- 8.7 In the first instance, ISB's sole obligation under the warranties shall be to remedy the defect, provided that, in the case of an alleged breach of clause 8.2, ISB receives notice of the defect within the stated six-month period. The remedy may take the form of eliminating the defect, providing a new release of the Software or correction package or demonstrating how to avoid the effects of the defect in a reasonable manner. The Customer shall support ISB in locating any defect and its cause by ensuring the co-operation of its employees, allowing access (including remote access) to the Software and the equipment on which it functions and providing as detailed a description of the defect as possible. The Customer shall be obliged to accept ISB's recommended remedy for the defect. If ISB should fail to remedy a defect within a reasonable period of time, ISB and the Customer shall agree in writing a reasonable course of action, including a new date by which the defect should be remedied. Only if ISB should fail to remedy the defect by that agreed date, shall the Customer be entitled to seek damages; claims for damages shall be governed by clause 12. All other rights are excluded.
- 8.8 If a notice alleging a breach of warranty is received from the Customer but upon investigation by ISB it is determined that the problem complained of is baseless or is for any other reason not a breach by ISB of the warranties contained in this clause 8 (e.g. it is due to a Modification carried out by the Customer), then the Customer shall remunerate ISB for the services it has provided in investigating the matter in accordance with ISB's then current time and materials rates.
- 9. IPR Indemnity**
- 9.1 ISB warrants that it has the authority to license the Software and to provide maintenance on the terms of this Agreement. This clause 9 sets out the Customer's sole remedies if there is a breach (or alleged breach) of this warranty. It is not subject to the limit of liability set out in clause 12.1. All other rights are excluded.
- 9.2 Subject to clause 9.4, if any claim is brought or threatened by a third party against the Customer alleging that its use or possession of any components of the Software in accordance with the terms of this Agreement infringes the IPR of that third party then SAP shall at its own expense defend that claim and shall indemnify the Customer against all damages and costs awarded against the Customer or agreed by SAP by way of settlement provided that:
- 9.2.1 the Customer informs SAP promptly and fully in writing of the claim and does not concede or otherwise prejudice the claim;
- 9.2.2 the Customer authorises SAP (or any of its licensors nominated by SAP) to assume sole conduct of the dispute with the third party both in and out of court; and

9.2.3	at the cost of SAP, the Customer gives SAP (or the person nominated by SAP to have conduct of the dispute) all reasonable assistance.		transmission unit that enables SAP to provide such services remotely. Details of SAP's current standard releases from time to time are available via SAP's on-line information database.
9.3	Subject to the Customer complying with the provisos to clause 9.2, if the use or possession of any components of the Software in accordance with the terms of this Agreement infringes or, in SAP's opinion, may be held to infringe the IPR of a third party, SAP shall at its expense either procure for the Customer the right to continue to use those components or adapt or replace them to avoid the infringement (without materially detracting from their functionality), whichever SAP thinks is best, or, if none of the previous options can be accomplished on reasonable terms, terminate this Agreement in respect of the affected components of the Software and refund the licence fees paid by the Customer for those components.	10.5	ISB shall provide proactive remote services where, in addition to the requirements of clauses 10.3 and 10.4, the Customer:
		10.5.1	has installed the appropriate tools and monitors supplied by ISB (e.g. SAP Solution Manager, SAP EarlyWatch® Alert);
		10.5.2	has sent the SAP EarlyWatch® data to ISB monthly;
		10.5.3	has submitted an order for the services at least three months before it wishes the services to be performed; and
		10.5.4	provides remote access to its live instance of the Software.
9.4	SAP shall have no obligation under clauses 9.2 and 9.3 to the extent that any claim:	10.6	Each Software instance must be supported by a Competence Centre. A Competence Centre is an organisational unit, rather than a physical location. The Competence Centre shall act as a support desk providing first-level support for the SAP Software during normal local working hours, which shall act as a permanent centre of expertise and a central point of contact between ISB and the Customer organisation. It is deemed that ISB will be the Customer's Competence Centre. A competence centre shall fulfil the following functions:
9.4.1	is based on any acts or omissions of the Customer not authorised by this Agreement (or of any third party authorised to use or access the Software pursuant to the terms of this Agreement); or	10.6.1	support desk: the provision of first-level support for the Software during normal local working hours (at least eight hours a day, five days a week);
9.4.2	arises as a result of the use of the Software in combination with any equipment or programs or data not supplied by SAP; or	10.6.2	contract administration: co-operation with ISB over contract administration (e.g. system measurement, maintenance fee invoicing, release order processing, user master and instance data management);
9.4.3	arises as a result of a Modification or Enhancement which was carried out by someone other than SAP or its licensors; or	10.6.3	development request co-ordination: collection and co-ordination of development requests from within the Customer and Group Company organisations and representation of the interests of those businesses to ISB;
9.4.4	arises as a result of not using the latest release of the Software or correction package.	10.6.4	information management: distribution of information about the competence centre within the Customer and Group Company organisations and performance of internal demonstrations, information events and marketing for SAP solutions.
10.	<u>Maintenance</u>		
10.1	In accordance with and subject to the terms of this clause 10, ISB shall provide the following maintenance and services from the date of the Schedule:	10.7	The Customer acknowledges that any failure by it to utilise the proactive remote maintenance services offered as part of this Agreement may result in unsatisfactory Software performance and affect ISB's and or SAP's ability to correct malfunctions.
	<ul style="list-style-type: none"> • troubleshooting (clauses 10.10-10.12); • access to SAP's on-line information database (clause 10.13); • updates of the Software (clause 10.14); • use of SAP Solution Manager and SAP EarlyWatch® Alert (clause 10.15); • proactive remote services (clauses 10.16-10.18) • any other tools and services provided by SAP to its customer base generally as part of its maintenance services. 	10.8	The Customer shall actively co-operate with ISB, and, or SAP in connection with the provision of maintenance services; in particular, it shall provide adequate information to enable the diagnosis of malfunctions when providing troubleshooting support.
10.2	ISB reserves the right to alter the scope of the maintenance services if and to the extent that changes are made for SAP's customer base generally.	10.9	When malfunctions are reported by the Customer, ISB shall try to supply information on how to remedy, avoid and bypass them. The main channel for requesting troubleshooting support shall be via SAP's on-line support system although the Customer may also contact ISB by telephone during the hours of 0900 to 1700 (Normal Working Hours) on any Working Day. Malfunctions can be reported on a 24x7 basis via SAP's on-line support system. Prior to the Customer establishing its first competence centre, only five nominated Named Users shall be
10.3	ISB shall not be obliged to provide any of the maintenance services unless the maintenance fees have been paid or, in the event of any breach by Customer of its obligations under any financing or leasing agreement, terminate or suspend the provision of any of the maintenance services in accordance with the terms of such financing or leasing agreement.		
10.4	ISB shall provide troubleshooting and (subject to clause 10.5) proactive remote services where the Customer is using a release of the Software that is classified by SAP at the relevant time as a current standard release and it has a remote data		

- entitled to submit requests to SAP for troubleshooting support. Once the Customer has established its competence centre(s), the limit shall be five Named Users per competence centre.
- 10.10 The Customer shall be responsible for implementing any remedy provided by SAP or ISB as part of troubleshooting support.
- 10.11 ISB shall endeavour to provide troubleshooting support for third-party database software supplied as part of the Software.
- 10.12 The Customer may access SAP's on-line information database which contains details and fixes on how to correct, avoid or bypass certain known malfunctions. SAP's on-line information database also contains information provided by SAP user groups that has not been tested or approved by SAP and the Customer uses this at its own risk.
- 10.13 SAP publishes its release strategy from time to time and, upon request, ISB shall supply to the Customer all applicable new releases of the Software and correction packages as they are made generally available.
- 10.14 The Customer shall receive SAP Solution Manager and SAP EarlyWatch® Alert and shall be licensed to use them to support its use of the Software in accordance with the terms of this Agreement. The SAP Solution Manager contains tools that monitor systems and core business processes. SAP EarlyWatch® Alert is an automated tool that gives regular updates on system status.
- 10.15 The Customer shall have one of the following services per live Software instance per calendar year:
- 10.15.1 **SAP GoingLive™ Check:** a service that analyses performance of an instance of the Software prior to the start of live operation (including an inspection of the configuration of individual components, analysis of load distribution and a sizing plausibility check);
- 10.15.2 **SAP GoingLive™ Functional Upgrade Check:** a service that analyses performance of an instance of the Software prior to the start of live operation of a functional release upgrade (including an inspection of the configuration of individual components, analysis of load distribution and a sizing plausibility check);
- 10.15.3 **SAP OS/DB Migration Check:** a service to support the migration of a database or operating system related to an instance of the Software.
- 10.16 The Customer shall also be entitled to a review by SAP of SAP EarlyWatch® Alert data for a live instance of the Software once per calendar quarter and, if vital alerts are reported by SAP EarlyWatch® Alert, SAP shall perform one SAP EarlyWatch® Check (this is a remote technical analysis of the Customer's SAP applications designed to identify performance-related problems) in the calendar year of this Agreement and two per calendar year after that.
- 10.17 The proactive remote service entitlements described in clauses 10.16-10.17 cannot be carried over into the following calendar year if they are not used and are instance-specific.
- 10.18 The maintenance fees shall be calculated from the date of the SLMC as a percentage of the gross licence fees, as set out in Schedule B (fees for part years being apportioned on a pro rata basis), for the permitted usage of the Software as set out in the Schedule A.
- 10.19 Maintenance will terminate automatically on termination of this Agreement pursuant to clause 14.
- 10.20 Where the Customer has contracted for the ISB Alert Service as detailed in the Schedule this is intended to provide support for the Customer in the event that the Customer experiences a priority 1 support issue outside of ISB's Normal Working Hours as follows:
- 10.20.1 A priority 1 support issue is reserved exclusively for situations where the Customer's productive SAP Software is down, the issue is causing significant business impact or the Customer intends to go live within the next day and the issue will prevent the Customer going live.
- 10.20.2 The Customer's SAP competence centre will be responsible for coordinating resolution of priority 1 issues with SAP, ISB and the Customer's end users as appropriate. For the avoidance of doubt, ISB will provide support to the Customer's SAP competence centre in resolving support issues.
- 10.20.3 In the first instance the Customer shall log priority 1 support issues via SAP's on-line support system as per clause 10.10.
- 10.20.4 In the event of a priority 1 support call being logged with SAP outside of ISB's Normal Working Hours, the Customer's SAP competence centre may contact ISB to invoke the ISB Alert Service using the telephone numbers provided by ISB. ISB will then provide support to the Customer's SAP competence centre and SAP where appropriate until the issue is resolved. ISB's initial response time shall be within 1 hour of the call being placed with ISB's help desk.
- 10.21 During the continuance of the Maintenance Contract, the Customer shall:
- 10.21.1 Ensure that only properly trained and authorised persons use the System and that such persons at all times follow ISB's and, where applicable, SAP's recommendations and requirements from time to time regarding the use of the same and the provision of security and backup copies.
- 10.21.2 Nominate a system supervisor who will handle most communications between the Customer and ISB regarding the use of the System and the provisions of the Maintenance.
- 10.21.3 Promptly notify ISB if any part of the SAP Software is not working properly.
- 10.21.4 Provide at its own expense such telecommunication facilities as are reasonably required by ISB and/or SAP for testing and diagnostic purposes and to facilitate access to SAP's on-line information database.
- 10.21.5 Keep full security copies of the Customer's programs, databases and computer records in accordance with best computing practice.
- 10.21.6 Provide at its own expense all information and facilities reasonably required by ISB to enable ISB to perform the Maintenance.
- 10.21.7 Provide, upon reasonable request by ISB, the applicable licence number(s) for the SAP Software.
- 10.21.8 Use the SAP Software (and the Designated Equipment upon which the same is run) in a proper and careful manner and, in the case of the SAP Software, in accordance with the written instructions of ISB or SAP and to use only such media as ISB

- may from time to time approve in connection with such SAP Software.
- 10.22 If the Customer has failed to make payment of any maintenance fees that are due, ISB may serve notice on the Customer requesting it to remedy its breach by paying those fees within 15 days of the date of service of the notice. If the fees are not paid, ISB shall have the right at any time after the expiry of that 15 day period and whilst the fees remain unpaid, to terminate maintenance immediately by giving notice to that effect to the Customer.
- 10.23 Either party may terminate maintenance, by giving not less than three months' notice to the other, on the expiry of the first full calendar year after the date of this Agreement or on the expiry of any subsequent calendar year.
- 10.24 Following termination, the Customer may reinstate maintenance by paying to ISB all maintenance fees that would have been due but for the termination.
- 11. Confidentiality/Publicity**
- 11.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not use or disclose any of it without the prior written consent of the other party other than as necessary to fulfil this Agreement or as required by law.
- 11.2 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents, contractors, auditors or other professional advisors to whom, and to the extent to which, disclosure is necessary for the fulfilment of this Agreement or for the purposes of professional advice and to ensure that those persons observe the terms of clauses 11.1 and 11.2.
- 11.3 Clauses 11.1 and 11.2 shall still apply after termination of this Agreement except to information which loses its necessary quality of confidence in any way other than as a result of a breach by either party of clause 11.1 or 11.2 or a disclosure by either party or a third party in breach of any other obligation of confidence.
- 11.4 The parties shall work together to manage publicity concerning their relationship and, in particular, they shall try to agree co-operation in the following areas: use of the Customer's name in ISB customer lists; reference site visits to Customer/Group Company premises by other ISB customers or prospects; reference telephone calls between nominated contacts of Customer/Group Companies and other ISB customers or prospects; publication of case studies relating to the business benefits and technical aspects of Customer/Group Company ISB software projects; speaking engagements and press releases.
- 12. Limits of Liability**
- 12.1 Except as referred to in clause 12.3 and subject to clause 12.2, the aggregate liability of ISB in respect of all claims arising under or in connection with this Agreement or the legal relationship established by this Agreement (whether in contract, tort or otherwise) shall be limited so that it shall in no circumstance exceed 125% of the total licence fees payable under this Agreement.
- 12.2 ISB shall not in any circumstance (other than those referred to in clause 12.3) be liable for any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to data or for any indirect, incidental, consequential or special loss or damage.
- 12.3 Nothing in this Agreement shall exclude or limit ISB's liability for death or personal injury resulting from negligence or in relation to any claim based on fraud, criminal act or a breach of the obligations imposed by s.12, Sale of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982.
- 13. Assignment/Sub-licensing**
- The Customer may not assign or otherwise transfer or hold on trust its rights and obligations under this Agreement in whole or in part. Furthermore, the Customer may not sub-license its rights and obligations or any of them except as referred to in clauses 3.8, 3.16 and 3.18.
- 14. Termination**
- 14.1 This Agreement may be terminated:
- 14.1.1 by the Customer giving 30 days written notice to ISB;
- 14.1.2 by either party immediately on giving notice to the other where that other party has committed a material breach of any term of this Agreement and, in the case of a breach which is capable of being remedied, shall have failed to remedy that breach within 30 days after receiving a notice from the other party requesting it to do so; or
- 14.1.3 by either party immediately upon the other passing a resolution for winding-up (for a reason other than a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction making an order to that effect or the other party ceasing or threatening to cease to carry on business or the occurrence of any similar event in any jurisdiction.
- 14.1.4 (where the Customer has entered into any financing or leasing agreement in relation to the Software) by ISB in accordance with the terms agreed by Customer in such financing or leasing agreement.
- 14.2 Upon termination for any reason:
- 14.2.1 all rights granted to the Customer under this Agreement and by the Customer to Group Companies, Supply Chain Third Parties and Outsource Providers shall end;
- 14.2.2 within 30 days of termination, the Customer shall return (or, if so requested by ISB, destroy) the Software and Documentation and all copies of it or any part of it and shall erase all stored copies, unless there is a legal requirement for it to keep them for a longer period in which case it shall give notice to ISB informing ISB as to that requirement and shall subsequently return them to ISB as soon as practicable when that legal requirement ceases to apply. The Customer shall certify that this has been done and this certificate shall be served in accordance with clause 15.8.
- 14.2.3 any term of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination shall come into force or continue in force as intended; and
- 14.2.4 rights that have accrued to either party prior to termination shall not be affected.
- 15. General**
- 15.1 This Agreement constitutes the entire agreement and understanding of the parties relating to the supply, licensing, use, possession and maintenance of the Software and Documentation; it supersedes any previous agreement or understanding between

- the parties relating to that subject matter. Subject to clause 12.3, the Customer acknowledges that in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any representation or statement (written or oral) made by any person (whether or not a party to this Agreement) other than those expressly set out in this Agreement and that, in respect of the representations and statements which are expressly set out in this Agreement, the Customer's only remedies shall be for breach of contract under the terms of this Agreement.
- 15.2 The terms of this Agreement are in lieu of all warranties, conditions, undertakings, terms and obligations concerning the supply, licensing, use, possession and maintenance of the Software and Documentation which might but for this clause have effect between ISB and the Customer or would otherwise be implied or incorporated into this Agreement or considered to take effect as a collateral contract, whether by statute, common law, trade usage, course of dealing or otherwise, all of which are agreed to be excluded to the fullest extent permitted by law.
- 15.3 No variation of this Agreement shall be valid unless it is in writing, it expressly states that it varies this Agreement and it is signed by authorised representatives of each party.
- 15.4 A failure to exercise or a delay in exercising a right or remedy provided by this Agreement or by law shall not constitute a waiver of that right or remedy. If an effective waiver of a breach of any of the terms of this Agreement is made, that waiver shall not constitute a waiver in respect of any other breach.
- 15.5 If any term of this Agreement is or becomes unenforceable or invalid, such invalidity or unenforceability shall not affect the other terms of this Agreement which shall remain in full force and effect.
- 15.6 If any term of this Agreement is or becomes invalid or unenforceable but would be valid or enforceable if some part of it were deleted or modified by the parties, the term in question shall apply with such modification as may be necessary to make it valid and enforceable. The parties shall act reasonably and in good faith to agree any such modification.
- 15.7 No delay, failure or default in the performance of any obligation under this Agreement shall constitute a breach of contract to the extent caused by circumstances beyond the reasonable control of the party whose performance is affected but nothing in this clause shall excuse the Customer from any payment obligations under this Agreement.
- 15.8 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the then current registered office of the recipient or such other address as the recipient may designate by notice given in accordance with this clause. All notices must be addressed to the parties' respective Finance Directors. Any notice must be delivered personally or sent by first class pre-paid recorded delivery and shall be deemed to have been served, if delivered personally at the time of delivery, or, if sent by post 48 hours after posting.
- 15.9 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 15.10 This Agreement shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Agreement or the legal relationship established by this Agreement.