



# JCS Standard Terms and Conditions

## JCS Software Licence Agreement

### 1 DEFINITIONS

- 1.1 'Agreement' shall mean this document.
- 1.2 'Licensee' shall be the individual, company or partnership renting the rights to the Software.
- 1.3 'Licence' shall be the monthly licence to use the Software granted in accordance with section 5 of this Agreement.
- 1.4 'Rental Fee' shall be the monthly fee payable to JCS by the Licensee as specified from time to time by JCS and calculated with reference to the number of concurrent users of the Software subject to the limitation in clause 11.7 of this Agreement.
- 1.5 'JCS' shall be X-Ware Limited of Le Grenier, Grand Marché, Les Camps, St Martin, Guernsey GY4 6AA and its successors or assigns.
- 1.6 'Software' shall mean JCS computer programme/s rented monthly under this Agreement and shall include any upgrades, replacements, modifications or additions supplied under this Agreement. 'Software' does not include data entered by the Licensee using the Software.
- 1.7 'Hosting Services' shall mean services provided by JCS for the running of the Software and/or the storage or transmission of data.
- 1.8 'User' shall mean an employee, servant, agent or subcontractor of the Licensee who exercises a right to access the Software.
- 1.9 'Licence File' shall mean the monthly file supplied by JCS to the Licensee, which is required to use the Software each calendar month.
- 1.10 'Business Day' shall mean any day other than a Saturday, Sunday, or a bank or public holiday in England.
- 1.11 'Customer Privacy Policy' shall mean the policy published on the JCS web site and available from JCS by request.

### 2 AGREEMENT

The terms and conditions set out in this Agreement shall have immediate effect and shall replace and supersede any previously issued terms and conditions. JCS has the right to revise and amend the terms of this Agreement from time to time. You agree that you will be subject to the terms of this Agreement in force as from time to time revised unless you notify us to the contrary within thirty days of notification of the revised terms and conditions.

### 3 EXCLUSIONS AND LIMITATION OF LIABILITY

- 3.1 This section of the Agreement sets out the entire financial liability of JCS (including any liability for the acts or omissions of its employees, servants, agents and sub-contractors) to the Licensee in respect of:
  - a) any breach of this Agreement
  - b) any use made by the Licensee of the Software; and
  - c) any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with this Agreement.
- 3.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 3.3 JCS shall not be liable, whether in tort, contract, misrepresentation or otherwise for any loss of profits, business,

goodwill, contract, use, corruption or loss of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

3.4 JCS' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance of this Agreement shall be limited to £10,000.

3.5 Save that nothing in this Agreement shall limit or exclude the liability of JCS for:

- a) death or personal injury resulting from negligence; or
- b) any damage or liability incurred by the Licensee as a result of fraud or fraudulent misrepresentation by JCS.

#### 4 SOFTWARE SUITABILITY

4.1 The Licensee is encouraged to test the Software's suitability prior to commencement of this Agreement.

4.2 JCS does not warrant or represent nor is it a condition of this Agreement that the functions contained in the Software will meet the Licensee's requirements or will operate in the combinations, including any other hardware or software, which may be selected for use by the Licensee.

4.3 Whilst JCS undertakes that the Software will function substantially in accordance with the current product description, the Licensee warrants its understanding and unconditional acceptance that it is not possible to produce computer software that is entirely error free, and as a consequence JCS does not warrant that the Software (or any releases, updates or revisions) is error free or the Licensee's use of the Software will be uninterrupted. The undertaking given in this clause is in lieu of any condition or warranty express or implied by law as to the quality or fitness for any purpose of the Software. All other conditions, warranties and representations express or implied by statute, common law or otherwise in relation to the Software are excluded by JCS, to the fullest extent permitted by law.

4.4 During use, the Software makes connections to JCS and third party provided Web sites and other online services. This includes, but is not limited to: obtaining policy information including owner details, implementing functionality on third party web sites, connecting to information portals, and connecting to JCS servers. Any information passed to JCS servers is subject to the JCS Customer Privacy Policy. The Software does not pass any Personal Client Data to JCS servers except that passed as part of Hosting Services, and detailed explicitly in the JCS Customer Privacy Policy.

#### 5 LICENCE

5.1 Subject to the Licensee's payment of the Rental Fee and compliance with the terms of this Agreement, the Licensee is granted a personal, non-exclusive and non-transferable licence to use the Software strictly in accordance with the terms of this Agreement. All intellectual property rights and title to the Software shall remain with JCS and no interest or ownership therein is conveyed to the Licensee under this Agreement. No right to modify, adapt, or translate the Software or create derivative works therefrom is granted to the Licensee. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Licensee has any right to obtain source code for the Software.

5.2 The Licensee may not, without the prior written consent of JCS:

- a) lease, loan, resell or otherwise distribute the Software; or
- b) except as permitted in this Agreement, permit access to or use of the Software by or on behalf of any third party.

5.3 The Licensee shall indemnify JCS and keep JCS fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with:

- a) any breach by the Licensee of this Clause 5; or
- b) a breach of copyright or other intellectual property or proprietary right, or a breach of confidence by the Licensee, its employees, servants, agents or contractors.

### 6 MODIFYING

The Licensee may not modify, reverse engineer, disassemble or decompile the Software or incorporate the Software into any programme/s not provided by JCS.

### 7 HOSTING SERVICES

7.1 JCS may provide Hosting Services to the Licensee under this Agreement.

7.2 The Hosting Services shall be provided using appropriate levels of security. Where personal data is passed over a public network this shall be encrypted.

7.3 The Hosting Services shall be provided from within the European Economic Area (EEA), a country with adequacy decision from the European Commission, with regards to GDPR, or from an entity that provides suitable safeguards as per the JCS Customer Privacy Policy.

7.4 The Licensee shall be responsible for maintaining the data held on the Hosted Services. Where access to Hosted Services is granted to third parties, the control of access rights is solely the responsibility of the Licensee.

7.5 JCS shall use reasonable endeavours to maximise the uptime of the Hosting Services.

7.6 JCS may provide a secure holding area to the Licensee, to allow third parties to send electronic messages and data to the Licensee, for collection by the Licensee. This includes, but is not limited to electronic commission and fee statements issued by Product Providers to the Licensee. JCS acts as a Data Processor on the Licensee's behalf and may provide this service using a subcontractor.

### 8 SUPPORT SERVICES

8.1 JCS will provide Support Services to the Licensee under this Agreement, delivered by such means as JCS deems appropriate at the time. This may include but is not restricted to, telephone, email, fax and internet based communication. In order to provide a flexible service, JCS reserves the right to change its Support Service delivery methods without notice.

8.2 In the event that JCS is granted access to the Licensee's system for the purpose of providing Support Services, JCS agrees that it shall keep confidential and shall not disclose to any other person without the Licensee's written consent any information held by the Licensee which is identified as Personal, confidential or is confidential in nature.

8.3 JCS shall supply Support Services on every Business Day between the UK local times of 8:30am and 5:00pm. JCS shall use reasonable endeavours to provide the Support Services as promptly as possible; however in so doing, gives no guarantee that any defect in the Software can be rectified.

8.4 JCS will make reasonable efforts to ensure that the skill levels of the staff providing the Support Services are commensurate with the competence needed to resolve the service request.

8.5 The Licensee must ensure that any User using the Support Service is competent and knowledgeable of the Software.

8.6 For the duration of this Agreement, JCS will provide the Licensee with upgrades to the Software free of charge.

8.7 The Licensee may send to JCS a copy of their data entered into the software, for support and diagnostic purposes. Processing of this data will be in accordance with the JCS Customer Privacy Policy.

8.8 The Licensee may send to JCS details of any errors within the Software, for support and diagnostic purposes. Processing of this data will be in accordance with the JCS Customer Privacy Policy.

### 9 SOFTWARE VERSIONS

9.1 JCS will provide Support Services for the current version of the Software. JCS will not support superseded versions of the Software once a new version is available.

9.2 In the event of JCS changing its policy to support a major operating system for use of the Software, JCS shall

continue to provide support for the Software on the deselected operating system for a minimum of 6 months from the date of notice of de-selection of the operating system, to allow the Licensee to migrate to a supported operating system.

### 10. **SUPPORT SERVICES LIMITATIONS**

- 10.1 JCS is not obliged to provide Support Services when any of the following occurrences is the cause of the request for Support Services:
- a) Malfunction of hardware or operating system software, except within Hosting Services
  - b) Negligence by the Licensee
  - c) The Licensee changes to an un-supported operating system
  - d) A User of the Licensee is deemed by JCS to be insufficiently competent in the use of the Software for the Support Service to be provided effectively; or
  - e) Where the request for Support Service is caused by third party applications that have not been developed by JCS or its subcontractors.
- 10.2 JCS will not under this Agreement provide any consultancy advice including, but not limited to, best-practice technical advice, data conversion or engineering advice.
- 10.3 This Agreement does not cover on-site installation or on-site support.

### 11 **FEES, INVOICES AND PAYMENTS**

- 11.1 JCS will issue a Licence File to the Licensee each calendar month on or before the last day of the previous month subject to clause 11.3 of this Agreement.
- 11.2 On or around the 1<sup>st</sup> day of each calendar month JCS will raise an invoice to the Licensee for the Rental Fee due for that calendar month. The Rental Fee will be payable by Direct Debit (or exceptionally by other means at the discretion of JCS and subject to an additional charge) on or around the 15<sup>th</sup> day of that calendar month.
- 11.3 In the event that the Rental Fee remains outstanding on the 24<sup>th</sup> day of that calendar month, JCS reserves the right to withhold the provision of a Licence File and/or Support Services for subsequent calendar months.
- 11.4 Requests by the Licensee for changes to the number of concurrent users shall be implemented by JCS as soon as practicable by means of issuing a new Licence File.
- 11.5 Where an increase in concurrent users is implemented on or before the 8<sup>th</sup> day of a calendar month, JCS will raise an additional invoice covering the increase in Rental Fee for that calendar month. Increases implemented after the 8<sup>th</sup> day of a calendar month will incur no additional Rental Fee in that calendar month.
- 11.6 Where a decrease in concurrent users is notified to JCS on or before the 24<sup>th</sup> day of a calendar month, the Rental Fee will reduce with effect from the next calendar month. Where the decrease is notified to JCS after the 24<sup>th</sup> day of a calendar month, JCS shall charge the unreduced Rental Fee to the Licensee for the following calendar month.
- 11.7 Following the commencement of this Agreement JCS will not increase the Rental Fee payable by the Licensee for its existing number of concurrent users, except that with effect from 1 May annually an increase of no more than the Retail Prices Index for the year to March of that year may be applied.
- 11.8 The Licensee shall be liable to pay any sales or value added tax related to this transaction, however designated.

### 12 **TERMINATION**

- 12.1 The Licensee may terminate this Agreement with effect from the last day of any calendar month by giving notice in writing on or before the 24<sup>th</sup> day of that calendar month.
- 12.2 JCS may terminate this Agreement by giving a minimum of 6 months notice in writing to the Licensee.

12.3 JCS may terminate this Agreement by notice in writing with immediate effect:

- a) if the Licensee shall have committed a breach of its obligations under this Agreement which is capable of remedy and which shall remain unremedied 30 days after notice of such breach has been served by JCS on the Licensee
- b) if the Licensee shall have committed any breach of its obligations hereunder which is not capable of remedy; or
- c) if the Licensee being an individual shall be declared bankrupt, or being a company shall be declared insolvent or an administrator or receiver be appointed or shall go into liquidation save for the purpose of amalgamation or reconstruction or a charging order shall be made over any of its assets, or being a partnership shall be dissolved, or the equivalent of the foregoing under the law of any other jurisdiction.

### 13 OWNERSHIP

13.1 The Software and all intellectual and proprietary rights in the Software are owned by JCS, and its structure, organisation and code are the valuable trade secrets of JCS. The Licensee shall follow all reasonable instructions given by JCS from time to time with regard to the use of trademarks owned by JCS and rights of JCS.

13.2 Title, copyright and all other proprietary rights in the Software and the accompanying documentation and all parts and copies thereof shall remain vested in JCS, and the Licensee hereby covenants not to permit the removal or deletion of any copyright notice which may be endorsed on the Software or the accompanying documentation.

### 14 ASSIGNMENT

The Licensee shall not assign any of its rights or obligations under this Agreement without the prior written consent of JCS.

### 15 FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond the party's reasonable control.

### 16 WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of the party under this Agreement.

### 17 ENFORCEMENT

If any term or provision of this Agreement or any part thereof shall be held to be illegal or unenforceable under any enactment or rule of law, such term or provision or part thereof shall be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

### 18 COMPLETE AGREEMENT

This Agreement is the complete and exclusive statement of the agreement between the parties which supercedes all proposals or prior agreements oral or written and save as expressly set forth herein all representations conditions or warranties express or implied statutory or otherwise are excluded. No terms proposed by the Licensee shall be incorporated in this Agreement or otherwise have any contractual effect.

### 19 NOTICES

Any notice to be given hereunder shall be delivered or sent by recorded delivery mail to the registered office of JCS or the Licensee if a corporation or to his usual or last known place of residence if the Licensee is an individual or firm and any such notice shall be deemed to have been served when delivered at the time of delivery or when so mailed at the expiration of 24 hours after the envelope containing the same was put into the mail and in providing such service it shall be sufficient to prove that the envelope containing the same was properly addressed and mailed as a prepaid recorded delivery letter.

20 **LAW**

This Agreement shall be governed by the laws of England and Wales. No term of this agreement confers on any third party any benefit or any right to enforce any term of this Agreement.

21 **JURISDICTION**

Each party to this Agreement agrees to submit to the exclusive jurisdiction of the courts of England and Wales.