

ICS Solutions, Inc. / Rhino Group Terms & Conditions

Introduction

At ICS Solutions, we want to make it as easy as possible to do business. We believe in the old-fashioned handshake, yet we need to ensure that our companies are on the same page with contracted work. To avoid any misunderstandings, our services are governed by these Standards Terms & Conditions (also referred to as “this Agreement” or “the Agreement”).

The configurations, installation, setup, and optimization of computer equipment and development of websites or custom applications are based on past jobs and experiences implementing this type of equipment or service. Due to the technical nature of the work, time estimates are presented to give you a realistic scope of the work to be performed. All times quoted are estimates and are subject to change based upon the work's details.

Hourly Rates

- 1) IT Consulting & Website Development - \$160/hour
- 2) IT Consulting & Website Development Emergency/After-hours -\$240/hour
 - a) After-hours support is between 5 pm and 7 am CST, unless otherwise negotiated and approved by ICS.
- 3) Custom Application Development - \$225/hour
- 4) Rates are subject to change upon ICS's notice to the Client.

Working Relationship & Obligations

- 1) Payment for satisfactory services will be made within 30 days from the date shown on the applicable invoice. If services are unsatisfactory, the Client will provide written notice to ICS within 15 days of the delivery date, or such services shall be deemed satisfactory.
- 2) Accounts 30 days and overdue will be assessed a finance charge of 1.5 % per month at an annual percentage rate of 18 % to be applied to the unpaid balance or the maximum amount permissible under applicable law, whichever is lesser.
- 3) All quotes are valid for ten days. Beyond this time, availability and pricing of equipment cannot be guaranteed.
- 4) ICS cannot be held liable for failure to perform services due to any events beyond its reasonable control, including but not limited to acts of nature and power or other service outages.
- 5) All fees must be paid in US Dollars.
- 6) Minimum billing is 1 hour, plus applicable travel expenses, which are billed at our standard hourly rate.
- 7) All projects require a deposit from the Client before work will begin. Deposits are non-refundable.
- 8) Shipping costs for hardware purchases are invoiced separately, and applicable taxes on hardware are not shown on quotes but are due in accordance with the law as it applies to your company.

- 9) It is the responsibility of the Client to be certain that all data and system backups are performed and in good working order. If the Client is unsure of backup conditions or reliability, it is the Client's responsibility to say something before ICS technicians work on systems, networks, and computers.
- 10) ICS will not be liable for system failures while working on the Client's equipment resulting in lost data or data integrity for any reason.
- 11) Websites will not be launched until they are paid for in full. Final payment is due upon Beta presentation.
- 12) ICS invoices one month in advance on all recurring services.
- 13) Web hosting services are invoiced when your website project begins.
- 14) ICS is not responsible for errors in key numbers or the accuracy of content; therefore, the website should be proofread and checked by the Client.
- 15) All text and accompanying photos are subject to ICS's approval. ICS is not responsible for lost photos, slides, or other materials.
- 16) ICS reserves the right at any time or for any reason to decline any inappropriate text or photography.
- 17) Upon termination, cancellation, or account delinquency, ICS is not responsible for any electronic data regarding your website after 15 days.
- 18) Any website hosted by ICS will be automatically suspended on the 60th day of a past-due invoice. A \$500 re-activation fee will occur to bring the website back online.
- 19) ICS cannot guarantee search engine placement. Overall results may vary for each Client.
- 20) In developing a website for the Client, ICS may incorporate ICS's proprietary web modules ("ICS Web Modules"). Any such incorporated ICS Web Modules are licensed to the Client on a non-exclusive basis. Upon termination of this Agreement, the client may transfer the ICS Web Modules to a new host solely for use within the context of the website built by ICS.
- 21) Under no circumstance will source code for ICS Web Modules be provided or sold.
- 22) Reproduction of ICS Web Modules is strictly prohibited. The client warrants that it shall not: (i) misappropriate any part of the ICS Web Modules or modify, disassemble, decompile, reverse engineer, copy, reproduce or create derivative works from or in respect of ICS Web Modules; (ii) damage or tamper with any part of the ICS Web Modules or ICS's servers or systems; (iii) breach or attempt to breach any ICS security measure; or (iv) access the ICS Web Modules or ICS hosting services to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics embodied in the proprietary website modules. Any improvements, enhancements, or modifications to the ICS Web Modules or other website modules or hosting services created, suggested, or requested by the Client shall be automatically assigned to or otherwise owned exclusively by ICS.
- 23) Website backups are done daily with a 30-day retention period. ICS is not responsible for any loss of data that occurs after a backup has been performed. ICS encourages all clients to keep a copy of website data off-site as well.

1. Term and Termination

- A. **Term.** The term of this Agreement will commence on the Acceptance Date and will remain and continue in effect, unless terminated, as provided hereunder.
- B. **Termination.** This Agreement may be terminated in whole or in part by either Party (the “non-breaching party”) upon written notice to the other party if any of the following events occur by or with respect to such other Party (the “breaching party”): (i) the breaching party commits a material breach of any of its obligations hereunder and fails to cure such breach within thirty (30) days after receipt of notice of such breach or fails to reach an agreement with the non-breaching party regarding the cure thereof; or (ii) any insolvency of the breaching party, any filing of a petition in bankruptcy by or against the breaching party, any appointment of a receiver for the breaching party, or any assignment for the benefit of the breaching party’s creditors.

2. Warranties

Client represents, warrants, and covenants: (i) that it will not utilize ICS’s services provided hereunder or any website hosted for Client to engage in tortuous or illegal activities, including, without limitation, the dissemination, storage, or display of pornography, defamatory material, computer viruses or other harmful software, or any materials that misappropriate or infringe any third party's intellectual, proprietary, or other property rights;; (ii) that it will abide by all laws, rules, regulations, and self-regulatory principles that apply to it; (iii) it shall post on its respective website hosted by ICS a privacy policy that is in compliance with all applicable laws, rules and regulations and that adequately sets forth the Client’s use of data in its possession or control; and (iv) that it owns or has permission to use, store, transmit and display all materials on any website hosted for Client. If ICS reasonably believes Client is breaching any of these material warranties, ICS may remove or disable access to all or any portion of the website without notice to Client and may terminate this Agreement for cause. This is section shall survive termination or expiration of this Agreement but only for such time and to the extent necessary for ICS to enforce its rights under the Indemnification section.

3. Warranty disclaimers

ICS EXPRESSLY PROVIDES ALL PRODUCTS AND SERVICES “AS-IS” AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. ICS WILL NOT BE LIABLE FOR ANY DAMAGE, LOSS, COST, OR EXPENSE FOR BREACH OF ANY SUCH WARRANTY. ICS DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR SERVICES, THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR THAT THE OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

4. Confidentiality

- A. “Confidential Information” means any information, data, or know-how disclosed by one party (the “Disclosing Party”) to the other (the “Receiving Party”), which, if in written, graphic, machine-readable or other tangible forms, is marked by the Disclosing Party as “Confidential” or “Proprietary,” or which, if disclosed orally or by demonstration, (i) is identified by the Disclosing Party at the time of initial disclosure as confidential (ii) the Disclosing Party reduces such

identification to writing delivered to the Receiving Party within thirty (30) days of such disclosure (iii) a reasonable party would consider the information as confidential. Confidential Information may include information disclosed to the Receiving Party by an entity related to the Disclosing Party. Confidential Information does not include information, data, or know-how that the Receiving Party can demonstrate: (i) was independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information or by the Receiving Party's employees or other agents (or independent contractors hired by the Receiving Party) who have not been exposed to the Disclosing Party's Confidential Information; (ii) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party that had no duty of confidentiality to the Disclosing Party with respect to such information; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; or (iv) was rightfully known to the Receiving Party, without restriction, at the time of disclosure.

- B. Treatment of Confidential Information. Each Receiving Party agrees not to use the Confidential Information disclosed to it by the Disclosing Party for the Receiving Party's own use or any purpose except for evaluation of and to carry out discussions concerning, and the undertaking of, the Business Opportunity. Each Receiving Party shall not disclose any Confidential Information of the Disclosing Party to third parties except those directors, officers, employees, consultants, and agents who must have such information to carry out such evaluation and discussions. Each Receiving Party represents that it has had, or shall have, those directors, officers, employees, consultants, and agents to whom Confidential Information of the Disclosing Party is disclosed or who have access to Confidential Information of the Disclosing Party sign a non-disclosure agreement substantially similar in content to this Agreement. Each Receiving Party shall take all reasonable measures (i) to protect the secrecy of and avoid disclosure or unauthorized use of Confidential Information of the Disclosing Party, and (ii) to prevent such Confidential Information from falling into the public domain or the possession of persons other than those persons authorized hereunder to have such information. Such measures shall include using the same degree of care that the Receiving Party uses to protect its Confidential Information of a similar nature but in no event less than reasonable care. Each Receiving Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of the Disclosing Party's Confidential Information, which may come to such Receiving Party's attention.
- C. Mandatory Disclosure. If a Receiving Party or its respective directors, officers, employees, consultants, or agents are requested or required by legal process to disclose any of the Confidential Information of the Disclosing Party, such Receiving Party shall give prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate relief. If such a protective order is not obtained, such Receiving Party shall disclose only that portion of the Confidential Information, which such Receiving Party's counsel advises that such Receiving Party is legally required to disclose.

5. Indemnification

Client agrees to indemnify, hold harmless and defend ICS, its affiliates, licensors, and suppliers, and each of their respective directors, officers, employees, contractors, subcontractors, and agents from and against any cost, expense, claim, or liability, including, without limitation, reasonable attorney's fees and costs, arising from or relating to Client's breach or alleged breach of its warranties or other obligations under this Agreement (each, a "Claim"). The client agrees that it shall not settle or take any

other action with respect to a Claim without ICS's written consent. ICS may participate in the defense of any Claim through counsel of its choosing. This indemnification section shall survive the expiration or termination of this Agreement.

6. Limitation of Liability

IN NO EVENT SHALL ICS BE LIABLE TO CLIENT OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR GOODWILL, WASTED EXPENDITURE, LOSS OF DATA, COST OF COVER FOR REPLACEMENT OR SUBSTITUTE GOODS OR SERVICES, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED BASED ON CONTRACT, TORT OR OTHERWISE, EVEN IF ICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ICS'S TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL FEES PAID BY THE CLIENT TO ICS HEREUNDER FOR THE ONE (1) YEAR PERIOD PRIOR TO ANY ACT OR OMISSION GIVING RISE TO ANY POTENTIAL LIABILITY. ICS AND THE CUSTOMER BOTH EXPRESSLY ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ON LIABILITY ARE A FAIR AND REASONABLE COMPROMISE AND WAIVE ANY RIGHT TO CHALLENGE THEM LATER AS UNREASONABLE, UNCONSCIONABLE, OR OTHERWISE. THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

7. Employee Protection

Client undertakes and agrees that during the term of the Agreement and, in the event of the expiration or termination of the Agreement for any reason whatsoever, for one (1) year after that, the Client will not, directly or indirectly, solicit or hire an employee or consultant or former employee or former consultant of ICS to provide services to or for Client or an affiliate of Client, whether as an employee, contractor, consultant or otherwise. The client recognizes that ICS's employees and consultants are one of its most valuable assets and that ICS has invested a substantial amount of time and resources in training such employees and consultants. If the Client breaches this no solicitation\ no hire covenant, it may be difficult to ascertain the precise amount of ICS's damages. In addition to any other rights and remedies that ICS may have, the Client will pay ICS for breach of this non solicitation\ no hire provision a sum of liquidated damages equal to the amount of the fee that ICS earned from the Client during the most recent twelve (12) month period during which the ICS provided services to such or Client or former Client. If services were not so provided for a full 12 months, liquidated damages shall equal an annualized amount of the fees charged for services during the partial 12-month period that services were provided. Client and ICS both agree that the amount established hereunder as liquidated damages is reasonable under the circumstances existing as of the time of execution of this Agreement. In addition, the Client agrees that irreparable injury would result to ICS in case of a breach of this no solicitation\ no hire covenant by the Client. Therefore Client agrees that ICS, in addition to any and all other remedies and damages which may be available at law or in equity, will be entitled to a temporary restraining order, preliminary injunction, permanent injunction, and any other injunctive relief should the Client breach, threaten to breach or attempt to breach such covenant of this Agreement.

8. General Provisions

- A. These Standard Terms and any written proposals or invoices issued by ICS Solutions referencing these Standard Terms schedules hereto constitute the entire agreement of the Parties relating to the purchase of the subject products or services from ICS and supersede all prior representations, proposals, discussions, and communications, whether oral or in writing.
- B. These Standard Terms may only be modified in writing, and authorized representatives of the Parties shall duly sign modifications.
- C. The client may not transfer or assign, in whole or in part, this Agreement or any of its rights or obligations under this Agreement to any third party without the prior written approval of ICS.
- D. To the extent the terms of any proposal or invoice issued by ICS Solutions conflict with these Standard Terms, these Standard Terms will prevail unless such proposal or invoice evidences a clear intent to supersede or modify these Standard Terms.
- E. ICS is an independent contractor of the Client, and nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Parties or any agent of ICS. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to such personnel as employees of the applicable Party.
- F. ICS may disclose the fact that the Client is a customer of ICS and may use the Client's logo and trademarks on ICS's website and in its sales or marketing collateral.
- G. If any provision of this Agreement shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of the remaining provisions.
- H. If (1) invoices issued under this Agreement are not timely paid per this Agreement or (2) Client is in breach of Sections 4, 6, or 7, and ICS initiates a suit against Client or otherwise incurs legal fees or collections costs because of such non-timely payment or to enforce its rights related to Client's breach or breaches of the foregoing sections, ICS shall, in addition to all other remedies provided by law, be entitled to recover its costs and expenses incurred in connection in addition to that, including the recovery of reasonable attorney's fees. This Agreement will be governed by the applicable laws of the State of Illinois, USA, excluding any conflict of laws rules that may apply in such state.
- I. This Section 10 shall survive the expiration or termination of this Agreement.