



SIRE Technology Limited  
Unit 23 Wellington Business Park, Crowthorne, Berkshire RG45 6LS, Tel: 01344 758700

## TERMS AND CONDITIONS FOR THE PROVISION OF [SOFTWARE SUPPORT SERVICES]

### 1. Interpretation

#### 1.1 Definitions:

|                                     |   |
|-------------------------------------|---|
| <b>Business Day</b>                 | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;  |
| <b>Charges</b>                      | the charges payable by the Customer for the supply of the Services which are set out in the Schedule and are payable in accordance with clause 5;   |
| <b>Commencement Date</b>            | has the meaning set out in clause 2.2;  |
| <b>Conditions</b>                   | these terms and conditions as amended from time to time in accordance with clause 10.5;   |
| <b>Contract</b>                     | the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;  |
| <b>Customer</b>                     | the person or firm who purchases Services from the Supplier, as identified in the quotation provided by the Supplier;   |
| <b>Customer Default</b>             | has the meaning set out in clause 4.2;  |
| <b>Deliverables</b>                 | all documentation, software, know-how and any and all other products and works produced by the Supplier for the Customer as part of the Services;   |
| <b>Intellectual Property Rights</b> | patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |



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|                           |   |
|---------------------------|---|
| <b>Order</b>              | the Customer's order for the Services as set out in the Customer's written acceptance of a quotation by the Supplier;   |
| <b>Services</b>           | the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Schedule;  |
| <b>Software</b>           | the software (if any) identified in the Schedule in relation to the Services, including any improved, modified or corrected version thereof issued by the Supplier from time to time (a <b>New Release</b> ); |
| <b>Supplier</b>           | SIRE Technology Limited; and  |
| <b>Supplier Materials</b> | has the meaning set out in clause 4.1.6.  |

## 1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order or when the Supplier commences performance of the Services pursuant to the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 7 Business Days from its date of issue.

## 3. Supply of Services

- 3.1 The Supplier shall provide the Services to the Customer.



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- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Schedule, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### 4. **Customer's obligations**

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order are complete and accurate;
  - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access (whether physically or remotely) to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 4.1.6 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
  - 4.1.7 take all reasonable precautions to protect the health and safety of the Supplier's employees, agents and sub-contractors while on the Customer's premises;
  - 4.1.8 not, for the duration of this Contract, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services to leave the employment of the Supplier; and
  - 4.1.9 in relation to the Software if any, (i) ensure that the Software is used only in accordance with any applicable licence agreement, (ii) not alter, modify or adapt the Software in any way, (iii) regularly back up the Software and



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all related files, (iv) not permit or authorise anyone other than the Supplier to provide any support services in respect of the Software, and (v) co-operate fully with the Supplier, its employees, agents, consultants and subcontractors in the diagnosis of any error or defect in the Software.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

4.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. **Charges and payment**

5.1 The Charges for the Services shall be as provided in the Schedule. The Charges shall include travelling expenses, hotel costs, subsistence and any associated expenses.

5.2 The Customer shall pay each invoice submitted by the Supplier:

5.2.1 within 30 days of the date of the invoice; and

5.2.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

5.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.4 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per cent per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.



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5.5 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 6. Intellectual property rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.3 All Supplier Materials are the exclusive property of the Supplier.

## 7. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

7.2.1 loss of profits;

7.2.2 loss of sales or business;

7.2.3 loss of agreements or contracts;

7.2.4 loss of anticipated savings;

7.2.5 loss of use or corruption of software, data or information;

7.2.6 loss of damage to goodwill; and

7.2.7 any indirect or consequential loss.



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- 7.3 Subject to clause 7.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the amount of the Charges.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 The Supplier does not warrant that the Services will cause any Software to operate without error or interruption either generally or for a specified period of time.
- 7.6 This clause 7 shall survive termination of the Contract.

## 8. **Termination**

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party not less than 60 days' written notice, to expire on the first anniversary of the Commencement Date or any subsequent anniversary thereof.
- 8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 8.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;
  - 8.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 8.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 8.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 21 days after being notified [in writing] to make such payment.
- 8.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2.2 to



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clause 8.2.4 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 9. **Consequences of termination**

On termination of the Contract for any reason:

- 9.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 9.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 9.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 9.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

## 10. **General**

10.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 10.2 **Assignment and other dealings.**

10.2.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

10.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 10.3 **Confidentiality.**



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- 10.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3.2.
- 10.3.2 Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.4 **Entire agreement.**
  - 10.4.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - 10.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 10.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
  - 10.6.1 waive that or any other right or remedy; or
  - 10.6.2 prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.





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10.8 **Notices.**

10.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.

10.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.8.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10.8.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.

10.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

10.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**SCHEDULE**



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## The Services

### Description

[Support in relation to [SOFTWARE]]

1. The Services shall comprise:
  - 1.1 a telephone help-desk to provide first-line technical support to users of the Software;  
and
  - 1.2 diagnosis of faults in the Software and the use of reasonable endeavours to rectify such faults (remotely or by attendance at the Customer's premises (but only within the United Kingdom) as determined by the Supplier) by the issue of fixes in respect of the Software.
2. The Supplier may, in addition, perform upgrades to the Software as and when it determines that it is necessary to do so in its sole discretion. The cost of performing any such upgrades is not included in the Charges and shall be agreed with the Customer in advance and invoiced monthly in arrears.
3. The Services shall be performed upon request by the Customer between the hours of 9:00am and 5:30pm on Business Days. The Supplier will use its reasonable endeavours to respond to a request for Services within such time periods but time shall not be of the essence.
4. The Supplier may, in its discretion, provide the Services outside the hours specified in paragraph 2 at the Customer's request. The cost of any such outside of hours Services shall not be included in the Charges and the Customer shall pay such further charges as the Supplier shall notify to it, which charges shall be invoiced monthly in arrears.
5. In the event that a New Release is made generally available and the Customer decides not to acquire and install that New Release within 12 months of the Supplier notifying the Customer that the New Release is available, the Supplier shall be entitled to terminate the Contract by 30 days' notice in writing to the Customer.

### Charges

1. Unless agreed otherwise by the Supplier in writing, the Supplier shall invoice the Customer for the Charges annually in advance.
2. The Supplier shall not be entitled to vary the Charges during the period of 12 months commencing on the Commencement Date. After this date, the Supplier shall be entitled to increase the Charges by an amount that does not exceed the increase (if any) in the Retail Prices Index as published by the Office for National Statistics during the period of 12 months immediately preceding the increase, by providing not less than 30 days' notice in writing to the Customer. The Supplier shall not increase the Charges under this paragraph 2 more than once in any period of 12 months.



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3. In the event that the Supplier wishes to increase the Charges by an amount that exceeds the permitted increase in paragraph 2 above, it shall provide the Customer with not less than 60 days' notice in writing. Upon receipt of such notice, the Customer may, within 7 days of the date of the notice, terminate the Contract by 30 days' notice in writing.

#### **Exclusions from the Services**

1. The Services shall not include the diagnosis and/or rectification of any fault resulting from:
  - 1.1 the improper use, operation or neglect of the Software;
  - 1.2 the modification of the Software or its merger (in whole or in part) with any other software;
  - 1.3 the use of the Software on any equipment other than that approved in advance by the Supplier;
  - 1.4 the failure by the Customer to implement recommendations in respect of solutions or faults previously advised on by the Supplier;
  - 1.5 any repair, adjustment, alteration or modification of the Software by any person other than the Supplier without the Supplier's prior written consent;
  - 1.6 use of the Software for any purpose for which it was not designed;
  - 1.7 any breach of the Customer's obligations under the Contract howsoever arising; or
  - 1.8 the Customer having the Software maintained by a third party  
(together, **Excluded Matters**).
2. The Supplier may (but shall not be obliged), upon request by the Customer, agree to provide services in respect of Excluded Matters. The charges for these shall be calculated by the Supplier on a time and materials basis at its then prevailing rates (which are notified to the Customer from time to time), which charges shall be invoiced by the Supplier monthly in arrears.
3. The Supplier shall further be entitled to charge the Customer additional amounts in relation to the Services, calculated by the Supplier on a time and materials basis at its then prevailing rates (which are notified to the Customer from time to time), if the Services are provided in circumstances where any reasonably skilled and competent technician would have judged the Customer's request to have been unnecessary.