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Winfrasoft Standard Terms and Conditions 1.3

As at 09/05/2011

1. GENERAL

1.1. Definitions

- 1.1.1. In these Conditions "**Conditions**" means the standard terms and conditions set out in this document.
- 1.1.2. "**Customer**" means the legal entity of which an authorised person has signed a general agreement, purchase order, service level agreement or proposal with Winfrasoft.
- 1.1.3. "**Winfrasoft**" means Winfrasoft Limited (company registration number 4354168 registered in England) whose registered office is at Atrium Court, The Ring, Bracknell, Berkshire, RG12 1BW, United Kingdom which is a fully owned subsidiary of Winfrasoft Corporation.
- 1.1.4. "**Writing**" includes any record of communication or notice acceptable in a Court of Law in England.
- 1.1.5. Any reference in these Conditions to an "**authorised employee**" of Winfrasoft shall mean any director of Winfrasoft.
- 1.1.6. "**Contract**" means any legal document stating a formal agreement between Winfrasoft and the Customer which has been agreed to and signed by an authorised representative of both parties therein.

1.2. The headings in these Conditions are for convenience only and shall not affect their meaning or interpretation.

1.3. Where the context so requires words importing the singular number shall also include the plural and references to the masculine include the feminine and vice-versa.

1.4. Any typographical clerical or other error or omission in any documentation issued by Winfrasoft shall be subject to correction without any liability on the part of Winfrasoft.

1.5. All Contracts entered into by Winfrasoft shall be deemed to incorporate these Conditions excluding any other terms and conditions whether appearing in any document or other communication used by the Customer in concluding any contract with Winfrasoft or otherwise, the exception being when appearing in a customer specific document prepared by Winfrasoft.

1.6. Winfrasoft reserves the right to alter the Conditions, with notice to existing customers, at any time. By continuing to accept services from Winfrasoft the Customer is deemed to be bound by the current Conditions. The current Conditions are available on request.

1.7. If the identity of the Customer shall be wrongly specified or misrepresented to Winfrasoft on any order accepted by Winfrasoft the individual specifying the Customer shall be liable personally to Winfrasoft as if the Customer.

1.8. Winfrasoft normal business hours are from 09h00 to 18h00 Monday to Friday. Unless otherwise stated, work provided after hours will be provided at 1.5 times the normal rate with the exception of Sundays and Bank holidays which will be provided at 2 times the normal rate.

2. QUOTATIONS AND PROPOSALS

- 2.1. No quotation of Winfrasoft shall constitute an offer.
- 2.2. All quotations shall be valid for 14 days from the date of issue.
- 2.3. Quotations may be withdrawn by notice, in writing, at any time.
- 2.4. New quotations render old quotations invalid.

3. SERVICES

- 3.1. Winfrasoft, in providing its services, shall exercise reasonable skill and care.
- 3.2. In the event that Winfrasoft does not possess the skills required in-house, Winfrasoft shall be able to subcontract any of its rights or obligations.
- 3.3. No work will be undertaken by Winfrasoft without a signed Winfrasoft Sales Order or a copy of the Customer's Purchase Order.

4. ADHOC SUPPORT (THIS IS NOT APPLICABLE TO CUSTOMERS WHICH HAVE A SERVICE LEVEL AGREEMENT)

- 4.1. Invoices will be issued on completion of a task.
- 4.2. Payments shall be made within 7 days of date of a valid VAT invoice.

5. SERVICE AGREEMENTS

- 5.1. Our services are offered on an on-going basis with all payments due in advance of any service. All charges are deemed contracted for a 12 month period from registration and thereafter are automatically renewed unless cancelled by either party giving a minimum of 2 calendar months notice, irrespective of payment period. Subject to Winfrasoft discretion, charges are non-refundable.

Winfrasoft Standard Terms and Conditions 1.3

- 5.2. Invoices will be issued at the beginning of the month for the following month's monthly charge and any additional charges incurred during the previous month.
- 5.3. Payments shall be made within 30 days of date of a valid VAT invoice unless otherwise stated on the invoice.
- 5.4. If the Customer falls into arrears with payments Winfrasoft reserves the right to cease the Services and, if it sees fit, to terminate the Agreement by giving written notice to the Customer.

6. PROJECT WORK (THIS SECTION DOES NOT PERTAIN TO WORK DONE UNDER A SERVICE LEVEL AGREEMENT OR AD-HOC SUPPORT)

- 6.1. Signoff documents need to be completed by the Customer to signify their acceptance of a plan or completion of a task. Signoff documents are required for the following where applicable:
 - 6.1.1. Technical Specification document
 - 6.1.2. Milestones, which will be indicated on the project plan
 - 6.1.3. Successful completion of a project
- 6.2. Payments shall be made within 30 days of date of a valid VAT invoice unless otherwise stated on the invoice.
- 6.3. Winfrasoft shall use reasonable commercial endeavours to adhere strictly to any dates contained in its quotation but in the event of failure to deliver or complete within the terms quoted, the same shall not be a breach or repudiation of the Contract. Winfrasoft shall not in any circumstances be liable for any consequential loss or damage suffered by the Client as a result of such delay.
- 6.4. Winfrasoft shall have the right subject to reasonable prior notice to vary the prices quoted in the event of:
 - 6.4.1. Any increase in the cost of sub-contracted labour.
 - 6.4.2. Any increase in any customs import or export duties
 - 6.4.3. Any cost incurred due to delays caused by the Client including (but not limited to) late instructions, changes in delivery schedules, failure to give adequate information and/or failure or delay in the supply of special tools, materials, drawings or patterns.
 - 6.4.4. Any change in the rate of exchange of currency quoted in relation to Pounds Sterling (GBP) where the Company is involved in expenditure in a currency other than Pounds Sterling (GBP).

7. PRICES

- 7.1. Prices for services will be reviewed annually and will take into consideration the inflation and earnings rates, currency and exchange rate movements and market forces.
- 7.2. The prices quoted are exclusive of any Value Added Tax, which will be charged additionally, where applicable, at the rate prevailing at the time of invoicing.
- 7.3. Where goods are concerned the quoted price also excludes carriage, freight and insurance, unless stated otherwise.
- 7.4. Services are charged for on an hourly basis and priced on a daily rate based on an 8 hour working day.
- 7.5. Travel is charged for on an hourly basis, rounded off to the nearest 30 minutes, at half the support rate.
- 7.6. The rates may vary based on by the type of work and skill level which is required.
- 7.7. Where a price is quoted in a currency other than Pounds Sterling (GBP) the invoice price, unless otherwise agreed by an authorised employee of Winfrasoft, in writing will be calculated in Pounds Sterling (GBP), using the mid market rate shown by the currency converter on <http://www.xe.com>, at the date of invoice.

8. PAYMENT

- 8.1. Payment shall be made in GBP £ sterling via cheques, bankers drafts or bank transfer direct to Winfrasoft's bank account as shown on the Invoice.
- 8.2. Winfrasoft reserves the right to (without prejudice to the rights of Winfrasoft under the Agreement) add compounded interest at the rate of 8.5% to sums due from the Customer to Winfrasoft which are not paid by the due date pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.3. The Customer shall not be entitled to withhold payment in whole or in part in respect of any claim it may have against Winfrasoft under or arising from any other Contract unless an acknowledged written objection has been lodged with Winfrasoft prior to the date of the due payment. Only Payments relating directly to such an objection may be withheld.
- 8.4. Should payment of any sums due to Winfrasoft not be paid when due Winfrasoft may at its discretion without prejudice to any other right or remedy available to it suspend or cancel any further deliveries or services to the Customer whether under the particular Contract or otherwise and in the case of suspension until payment of all outstanding amounts has been received by Winfrasoft.

9. CUSTOMER RESPONSIBILITIES

- 9.1. Data accessed by, or contained within systems undergoing assessment, repair, upgrade or maintenance must be considered at risk. Winfrasoft cannot accept responsibility for the integrity of such data although all reasonable precautions will be taken. It remains the Customer's responsibility at all times to ensure that a suitable backup policy is in place and adhered to.
- 9.2. The Customer warrants that all information provided by it or on its behalf to Winfrasoft will be accurate, current and to the best knowledge of the Customer.
- 9.3. The Customer shall comply with and discharge all applicable health and safety, statutory, environmental and data protection legislation duties and codes of practice including the provisions of the Health and Safety at Work etc. Act 1974 and any subsequent modifications and extensions plus any applicable rules, laws and regulations of Government. The Customer will provide Winfrasoft with any relevant information relating to the above when requested by Winfrasoft.

Winfrasoft Standard Terms and Conditions 1.3

- 9.4. When it is necessary for Winfrasoft consultants to work on-site at the Customer site for extended periods at a time (i.e. more than 2 days) the customer agrees to provide Winfrasoft staff with:
- 9.4.1. Parking (if applicable)
 - 9.4.2. The facility to lock away personal belongings
 - 9.4.3. The facility to lock Winfrasoft equipment away
 - 9.4.4. A designated work area with desk and chair
 - 9.4.5. Internet access

10. CONFIDENTIALITY

- 10.1. Unless otherwise agreed, this Contract and all information including Proprietary and or Confidential information concerning the business affairs, practices or methods of operation of the other party becoming available or coming into the possession or knowledge of Winfrasoft or the Customer by virtue of this Contract or its performance shall at all times be treated by the parties as confidential and shall not be released to a third party except with prior written consent of either party or for the purpose of legal proceedings.
- 10.2. The obligations of the parties under this Clause shall continue after the termination completion or cancellation of the agreement or any part of the agreement and shall be binding on authorised assignees. However the obligations shall not apply to information which is in the public domain otherwise than through a breach of either of the parties of its obligations under this Clause; or was received from third parties who were free to disclose the same; or was known or in the possession equally of or the party prior to this Contract and not subject to any other obligation of confidentiality.
- 10.3. The Customer shall not (and shall procure that its employees and agents shall not) without prior written consent from an authorised employee of Winfrasoft disclose to any third party any information or documentation or data on any other media of a confidential nature the property of Winfrasoft save any such previously in the public domain.

11. LIABILITY AND INDEMNITY

- 11.1. Winfrasoft shall under no circumstances whatsoever be liable for any economic, indirect or consequential loss howsoever caused.
- 11.2. Winfrasoft's liability in respect of breach or non-performance of any order shall be limited to the invoiced value to which the claim relates.
- 11.3. While Winfrasoft will use all reasonable endeavours to provide a prompt and continuing service, it will not be liable for any loss of data or revenue resulting from delays, non deliveries, missed deliveries, or service interruptions caused by events beyond the control of Winfrasoft or by errors or omissions of the Customer.
- 11.4. Winfrasoft specifically excludes any warranty as to the quality or accuracy of information from any 3rd Party.
- 11.5. Computer media supplied by Winfrasoft is subjected to an anti-virus test before dispatch. However, Winfrasoft cannot be held responsible for any third party malicious source code or data inadvertently transferred to Customer data systems. It is recommended that Customers screen all incoming computer media according to current best practice recommendations.
- 11.6. Winfrasoft shall indemnify and hold harmless the Customer against all claims, damages, losses and expenses in respect of death or personal injury to officers, employees, agents or invitees of Winfrasoft arising out of Winfrasoft's gross negligence or wilful misconduct in its performance under this Contract.

12. DISPUTE RESOLUTION

- 12.1. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with or arising out of this agreement other than one of payment, the same shall if not resolved amicably by mutual agreement between the parties within a reasonable time, be determined by one single arbitrator to be agreed upon between the parties or failing agreement to be nominated on application of either party by the Chartered Institute of Arbitrators in London.

13. JURISDICTION

- 13.1. This Contract shall be governed by and interpreted in accordance with English Law made in England and the Parties submit to the exclusive jurisdiction of the English Courts. If at any time any term or condition (or part thereof) of this Contract is or becomes illegal or void as a consequence of the operation of any law or regulation then the remaining provisions of this Contract shall remain in full force and effect.
- 13.2. Any condition or warranty that may be implied or incorporated within this contract, by reason of statute or common law, is hereby expressly excluded so far as maybe permitted by law.

14. FORCE MAJEURE

- 14.1. Winfrasoft will not be held responsible for failure or delay in carrying out the Services due in whole or in part to any circumstances whatsoever beyond its control. Winfrasoft shall be relieved of its obligations and liabilities for as long as fulfilment is prevented.