

# 9 Knots Business Solutions Ltd

## Terms & Conditions, Revision October 2020

This document outlines the Terms and Conditions ("T&C's") from 9 Knots Business Solutions Ltd, a company registered in the UK under number 04393123 and whose registered office is at APC 7 St John Street Mansfield Nottinghamshire NG18 1QH ("the Supplier"). It contains sections for various services, among which are software design, software delivery, hosting and support.

The T&C's outlined in this document apply to all organisations engaging in a business transaction with the Supplier. Note that not all sections of the T&C's may be relevant to all transactions.

Whereas:

- The Supplier is engaged in the business of providing services in relation to the design, development and ongoing hosting and support of case management software ("the Service / Services")
- In reliance upon that skill, knowledge and experience, the Client wishes to engage the Supplier to provide certain services and the Supplier has agreed to accept the engagement on the terms and conditions outlined in this document. This engagement is confirmed by a co-signed agreement ("the Agreement" or "the Contract") that explicitly refers to these T&C's and whereas that Agreement takes precedence over these T&C's where relevant
- The most recent version of these T&C's will be available on request at all times

### Definitions and Interpretations

1. Unless explicitly stated otherwise, each reference to "writing" in these T&C's includes any communication by letter, email and / or fax
2. Any reference to "Agreement" or "Contract" refers to the Agreement and any amends and / or supplements as in effect at that time
3. Any reference to the parties implicitly refers to their respective personal representatives, heirs, successors in title and permitted assignees, including contracted 3<sup>rd</sup> party agents
4. Any reference to a person includes any corporate body, unincorporated association, partnership or any other legal entity

5. Words indicating the singular number may also refer to the plural and vice versa
6. Words indicating any gender may also refer to the other gender
7. The clause headings used in this document are used for convenience only and are not intended to affect the meaning or interpretation of the terms of these T&C's

### The Service

1. The Supplier will make a software solution available to the Client that implements the requirements as outlined and / or referred to in the Agreement ("the System" or "the Solution")
2. The Supplier will install the System on an infrastructure which meets the minimum requirements as outlined by the Supplier. This infrastructure can be provided by the Client ("On Premise Hosting") or the Supplier ("Hosted")
3. The Supplier will optionally offer a support service to the Client to ensure the ongoing correct workings of the System and support the Client in successful deployment of the Service; details of the Suppliers' Support duties resulting from this clause are outlined in the relevant schedule of the Agreement
4. All reasonable effort has been taken to ensure that the System meets the industry guidelines and best practices at the time; including, but not restricted to, authorisation, security, data protection, storage, backup, failover and auditing
5. The Supplier confirms that
  - a. The System can be accessed using any industry standard web browser unless explicitly stated otherwise in the Agreement
  - b. The System will provide an end-user performance over standard Internet Connections that can reasonably be qualified as adequate by the Client

### Fees and Payment

1. The Customer will pay within 30 days ('thirty') of receipt of each Supplier invoice
2. Invoices will be presented in accordance with the payment schedule as presented in the Agreement
3. Failure to pay a Supplier invoice within the payment term with notifying the Supplier may be ground for terminating the Agreement

### Changes to the Agreement and / or T&C's

1. The Supplier reserves the right to change the terms of the Agreement, these T&C's and all other terms and conditions and policies which may affect the Client in order to comply with changes in the law. Any such changes are subject to
  - a. The Client will be informed of any such changes and shall be deemed to be bound by them 1 calendar month after receiving the notice
  - b. If the Client does not agree to be bound by the changes, they may terminate this Agreement in accordance with the exit policies as outlined in these T&C's

#### **Supplier Undertakings and Obligations**

1. The Supplier will provide resources with sufficient knowledge, expertise and experience in order to fulfil its obligations under these T&C's
2. The Supplier will ensure that all resources allocated to the fulfilment of the Service have the necessary security clearance
3. The Supplier will disclose any information to the Client which can realistically be seen as required for consuming the Service

#### **Client Undertakings and Obligations**

1. The Client may not use the Service for any unlawful or otherwise inappropriate purposes. The Client is at any time responsible for the data managed by the Service where this data can not reasonably be seen as part of the Service set-up
2. The Client will ensure that any precaution has been taken so that the Supplier can fulfil its duty in compliance with any health and safety regulations that may apply
3. The Client will disclose any information to the Supplier which can realistically be seen as required for the implementation of the Service
4. The Client shall officially accept the Service ("the Acceptance") either explicitly by signing the Acceptance Agreement as provided by the Supplier or implicitly by using the Service for purposes which can reasonably be seen as using the Service for operational purposes
5. The Client will facilitate a body which will act as the primary focal point for all Service-related queries, requests, issues and communication otherwise for the Supplier ("the Project Office")

#### **Liability**

1. The Supplier is liable to the Client and / or third Parties for damages or loss which can be seen as resulting directly from the Suppliers' activities related to the Service;
2. The liability for the Supplier is limited to
  - a. €2,500,000 per incident - or -
  - b. The total amounts that are paid by the Client to the Supplier under the Agreement whichever is the lowest
3. The Supplier shall not be liable to the Client and / or to third parties for:
  - a. Any damages or loss resulting from interruptions or downtime to the Service
  - b. Any inability, on the part of the Client, to use the Service
  - c. Any damages or loss resulting which can be seen as resulting indirectly from the Suppliers' activities related to the Service
4. Nothing in this Clause shall exclude the liability of either party for death or personal injury resulting from the party's negligence or that of its employees or contracted 3<sup>rd</sup> party agents
5. Nothing in this Clause or in this Agreement shall exclude the liability of either party for fraudulent misrepresentation, breach of confidentiality and / or breaching intellectual property rights

#### **Guarantees**

1. The Supplier guarantees that it will provide resources with sufficient skills, knowledge and experience to undertake the activities resulting from this Agreement
2. The Supplier confirms that the System / Service has been developed and will be maintained adhering to best practices of software engineering
3. The Supplier confirms that the System / Service should, under circumstances which can reasonably be seen as normal, be fit for purpose given the Client's requirements
4. The Client is entitled to invite an independent third party to assess the quality of the components provided by the Supplier; subject to
  - a. The costs of such an assessment are solely carried by the Client
  - b. The Supplier has to cooperate fully with such an assessment but may charge a market-confirm, commercial rate for the efforts concerned

#### **Intellectual Property**

1. The Supplier confirms that it is the rightful owner and / or has been granted the use of any intellectual properties required to meet its obligation outlined in this Agreement
2. The Supplier confirms that it holds the rights to grant the license of use to the Client for any component included in the System / Service
3. The Supplier shall defend at its own expense any claim brought against the Client alleging that the use of the System / Service infringes the Intellectual Property Rights of a third party ('Intellectual Property Claim') and the Supplier shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Client:
  - a. Provides the Supplier with prompt written notice of the Intellectual Property Claim
  - b. Provides the Supplier with reasonable assistance in respect of the Intellectual Property Claim
  - c. Gives to the Supplier the sole authority to defend or settle the Intellectual Property Claim
4. The Client will not acquire ownership rights over any of the Supplier's Intellectual Property in or in relation to the System / Service or in relation to any other property owned by the Supplier with exception of Intellectual Property rights related to data, processes, business rules, algorithms and assets otherwise that have been developed on request of the Client either as part of the initial assignment to design and develop the System / Service or any subsequent change and / or amend to the System / Service applied on request of the Client
5. The Supplier will not acquire ownership rights over any of the Client's Intellectual Property of the Client's data, processes, business rules, algorithms and assets otherwise in relation to the System / Service or otherwise
6. If the Supplier is responsible for hosting, then the Client agrees to fully indemnify the Supplier against all costs, expenses, liabilities, losses, damages, claims and judgments that the Supplier may incur or be subject to as a result of the infringement of any Intellectual Property infringement owned by third parties arising from:
  - a. The Client's failure to obtain the necessary rights and permissions from third parties in order to enable the Host to legally provide the System / Service
    - b. The provision of the System / Service by the Supplier based upon information and material provided by the Client
7. The Supplier will retain the Intellectual Property Rights of the System / Service and is allowed to exploit the System / Service commercially providing that
  - a. It does not engage in activities that are clearly designed to attract customers whom are currently engaged in a commercial agreement with the Client for services similar to those as being offered by the Supplier
  - b. The Client and Supplier have not engaged in a separate commercial agreement that can be seen to void this clause

#### **Non-Disclosure**

1. Both the Supplier and the Client may receive information classed as confidential (either explicitly or where information can reasonably be seen as classified) as a result of implementing the activities covered by this Agreement
2. Neither the Supplier nor the Client can disclose such information to 3<sup>rd</sup> parties without prior consent of the other party
3. Such non-disclosure does not apply to information which is
  - a. Available in the public domain
  - b. Has been received from parties other than the Client or the Supplier without a reference to its classified nature

#### **Brand and Reputation Protection**

1. Neither the Supplier nor the Client shall present the other party in any way that can reasonably be seen as harmful to the brand of the other party. This clause remains in effect after this Agreement has been terminated

#### **Force Majeure**

1. Neither the Supplier nor the Client shall be liable for breaching these T&C's or the Agreement where that breach results from Force Majeure
2. Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to, acts of God; acts of war; national emergencies; governmental action; union action; civil unrest; fire; explosion; flood and theft

### **Assignment**

1. The Supplier reserves the right to assign or otherwise transfer any rights or obligations under these T&C's or the Agreement
2. The Client may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Supplier
3. The Client is not allowed to commercially exploit the System / Service beyond its original intention

### **Severance**

1. In the event that any provision of these T&C's or the Agreement is found to be invalid or otherwise unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The waiver by either party of any provision of these T&C's or the Agreement will not operate or be interpreted as a waiver of any other provision or a subsequent breach of any provision

### **Law and Jurisdiction**

1. The Supplier will notify the Client in the event of an inspection which is being conducted by any authority which has been granted the right by legislation. Subject to:
  - a. The Supplier will take all precautions in confirming the identity of the 3rd party and confirming its' claimed authority
  - b. The Supplier will notify the Client before granting access to the Service to the authorised 3rd party
  - c. Supplier will provide the Client with all information regarding to the aforementioned event
  - d. The Supplier will grant the Client the right to be present on site in the aforementioned event
2. These T&C's or the Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with the law of England and Wales notwithstanding the conflict of law provisions and other mandatory legal provisions
3. Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each of the parties ('representatives') shall meet in person or

communicate by telephone or online within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone or online, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below

4. If the parties cannot resolve a dispute in accordance with the procedure in clause above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR') or any equivalent body recognized under the law of England and Wales, seek to resolve the dispute or difference amicably by using an resolution procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the resolution procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, the matter shall be settled in accordance with the procedure below
  - a. If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of these T&C's and / or the Agreement

### **Term and Termination**

1. The Supplier reserves the right to terminate the Agreement in the following circumstances:
  - a. If the Client fails to pay fees due under the Agreement
  - b. If the Client is in breach of any of the terms of the Agreement
  - c. If the Client is unable to pay its debts or is seen as insolvent as per his jurisdiction; or
  - d. If the Client has a receiver, manager, administrator or administrative receiver

- appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order
2. The Client reserves the right to terminate the Agreement in the following circumstances:
    - a. If the Supplier is in breach of any of the terms of the Agreement
    - b. If the Supplier is unable to pay its debts or is seen as insolvent as per his jurisdiction; or
    - c. If the Supplier has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order
  3. The following applies when the Client chooses to exercise its' rights as outlined in paragraph 2 of this clause:
    - a. The Client is entitled to a data extract of the data managed directly by the System or Service
    - b. The Supplier is obliged to deliver the Data in a timeframe which can be seen as reasonable
    - c. Any data directly related to the System or Service covered by the Agreement and held by the Supplier will remain to be subject to Non-Disclosure and Data Protection even after termination of the Agreement
  4. After Termination, the Supplier is allowed to switch off access to the System / Service without any further consequences. It may be possible that the Client is able to continue to use the System / Service after Termination (for example, because the Client has installed the System / Service on their own infrastructure without access for the Client). If this is the case it must be noted that by means of the Termination, the Supplier is released of any obligations directly related to the support and / or hosting of the System / Service

#### **Escalation**

1. Both the Client and the Supplier can start an escalation process in the event of a perceived

fail-to-deliver under the terms and conditions of an Agreement

2. The other party will be notified by any means of communication which is deemed appropriate and the escalation will have to be confirmed in writing. The details of the perceived fail-to-deliver have to be presented to the other party
3. The other party will have to confirm and acknowledge the escalation
4. Both parties will have to allocate sufficient management attention to an escalation in progress
5. During an escalation progress ad-hoc service levels will be mutually agreed and adhered to
6. In case of a failure to resolve the issue either party can request mediation by an authorised and mutually recognized third party whose decisions will be binding to both parties
7. Both parties will have to acknowledge to one-another where they feel that the escalation can be closed
8. Once an escalation is closed it can no longer be seen as influencing the Support Service in any way

#### **Support**

##### **Support Entitlement**

1. The Client is entitled to support on the Service and / or System providing that the Agreement cover support and is still active and has not been voided in any way
2. The Supplier will ensure to provide sufficient capacity of knowledgeable resources to meet its' obligations resulting from right-to-Support as outlined in the Agreement
3. Support is the collective set of procedures, rights and obligations designed to ensure the ongoing correct workings of the Service and / or System and / or the ongoing successful deployment of the Service and / or System by the Client ("the Support Service")

##### **Support Requests**

1. A Support Request is a request for service issued by the Client to the Supplier and which is covered by the Support as outlined in this Schedule of the Agreement
2. Each Support Request will fall into one of the following categories

- a. Request for Consultancy – The Client requests the Supplier for information where this information can reasonably be seen as related to the Service and / or System
  - b. Request for Investigation – The Client requests the Supplier to investigate and event or behaviour otherwise of the Service and / or System
  - c. Notice of Incident – The Client notifies the Supplier of an incident which can reasonably be seen as related to the Service and / or System. An incident (or Bug) is where the behaviour of the Service and / or System can reasonably be seen as deviating from its' intended behaviour
  - d. Request for Service / System Change – The Client requests the Supplier to consider a amendment, enhancement or change otherwise to the Service and / or System. A Change (or Enhancement) is where the behaviour of the Service and / or System can reasonably be seen as deviating from the behaviour as desired by the Client
3. Each Service Request will be assigned one of the following severities based on the impact to the business and / or user base
- a. Critical – The Service and / or System (or large sections thereof) is / are unavailable to all or a large number of users or can reasonably be seen as unfit for purpose
  - b. High – The Service and / or System (or large sections thereof) are available only at greatly reduced service levels and / or at greatly increased cost and / or risk where no workaround is available to remedy the situation
  - c. Medium - The Service and / or System (or large sections thereof) are available only at greatly reduced service levels and / or at greatly increased cost and / or risk and a workaround is available to remedy the situation
  - d. Low – The Service and / or System is available and fit for purpose but the service levels or quality otherwise can be further improved

**Support Process**

- 1. The Supplier acknowledges that has implemented processes and systems to deliver the Support in line with best industry practices
- 2. The Client must designate a limited number of named resources whom are authorised and

mandated by Client and Supplier to contact the Supplier under the terms and conditions of Support. The Client must inform the Supplier in case the details of the authorised resources change

- 3. All communication related to the execution of the Support Service is in English unless mutually agreed otherwise
- 4. Both parties have the responsibility to inform the other party of any inaccuracy, misinterpretation, misunderstanding and / or miscommunication otherwise resulting from the use of language (English or otherwise) and no claim or rejection of obligation can result from what can reasonably be seen as a genuine miscommunication of any sort
- 5. Support Requests must be presented to the Supplier using designated channels made available by the Supplier ("the Support Channels"); for example, a designated telephone number and / or email address
- 6. The Supplier will inform the Client of the details of the Support Channels and will inform the Client in the event these details change
- 7. The Support Channels must be deemed as appropriate for the purpose of delivering Support Requests
- 8. The Client is entitled to Support during Extended Office Hours (Monday to Friday, 9:00 – 17:00; Central European Time) excluding Christmas (25<sup>th</sup>, 26<sup>th</sup> December) and New Years Day (January 1<sup>st</sup>) (collectively referred to as "the Service Hours")

**Service Levels**

- 1. The Supplier must confirm receipt each Support Request using the appropriate Support Channel to the Client within 1 working hour
- 2. The Supplier must provide the Client with a resolution in accordance with the following Service Level Agreement table

<b>Severity</b>	<b>Service Levels</b>
Critical	The Supplier will start to work on a permanent resolution or acceptable workaround as soon as he is made aware of the critical incident.
	The Supplier is obliged to continue to work (regardless of Service Hours and / or applicable working directives) on the request until a permanent resolution or

	<p>workaround has been devised and implemented which is deemed as acceptable by the Client.</p> <p>The Supplier is obliged to keep the Client informed about progress (or lack thereof) at a minimum of once an hour</p>
High	<p>The Supplier will start to work on a permanent resolution or acceptable workaround within 4 working hours of being made aware of the incident with severity high.</p> <p>The Supplier is obliged to continue to work during Service Hours on the request until a permanent resolution or workaround has been devised and implemented which is deemed as acceptable by the Client.</p> <p>The Supplier is obliged to keep the Client informed about progress (or lack thereof) at a minimum of once every working day.</p>
Medium	<p>The Supplier will inform the Client of an estimated resolution date within 7 working days of receipt of the Support Request. The resolution day will be within 30 working days of receipt of the Support Request</p>
Low	<p>The Supplier will inform the Client of an estimated resolution date within 7 working days of receipt of the Support Request. The resolution day will be agreed with the Client</p>

4. The inclusive development hours will not be used for bug fixes which are covered by the Support Agreement
5. The Supplier is obliged to offer the inclusive development hours within a calendar month but is free to plan the work in during that calendar month
6. The Supplier will quote any work done under the inclusive development hours for approval by the Client
7. The inclusive development hours can, in principle, not be used as part payment for a larger system enhancement. This is only allowed at the discretion of the Supplier

### Hosting

1. The Client is entitled to Hosting of the System, providing that this service element is included in the Agreement
2. The Supplier guarantees that the Hosting service is delivered through a reputable 3<sup>rd</sup> party organisation ("the Hosting Provider") who operates Tier 3 data centres and implements best practices with respect to their responsibility for hosting
3. The Supplier confirms that it has contracts in place with the Hosting Provider that enable the Supplier to meet all obligations resulting from these Terms and Conditions
4. Hosting is provided in a virtualized server environment. The Supplier guarantees that it is the exclusive user of the virtual servers used for Hosting. However, it cannot guarantee that it is the exclusive user of the hardware the virtual environments operate on
5. The Supplier makes no guarantee with respect to uptime and cannot be held responsible for any costs (direct or indirect) of any unavailability of the System
6. The Supplier guarantees that it does take any reasonable precaution to ensure optimal availability of the System. It does so, for example and not limited to, by operating RAID disks, use of redundant hardware and dual Internet connectivity with different suppliers
7. The Supplier guarantees that the Hosting is dimensioned for adequate performance but cannot be held responsible for any costs (direct or indirect) of sub-standard performance of the System
8. The Supplier guarantees that it operates a daily backup, that the backup is encrypted and shipped to

### Inclusive Development Hours

1. The Client is entitled to a fixed number of inclusive development hours providing that this service element is included in the Agreement
2. The number of hours is fixed and applies per calendar month
3. Hours that are not used are in principle not transferrable to the next calendar month. They can only be transferred to a following calendar month at the discretion of the Supplier

an offsite facility and that the backup / restore procedure is tested frequently

9. The Supplier will, on request, provide a copy of the data managed by the System and owned by the Client. It may charge for the effort involved in providing the data
10. The Supplier holds the right to delete data after termination of the Hosting Agreement

#### **On Premise Hosting**

1. The Client is entitled to Hosting of the System 'on premise' that is, on hardware managed and under full responsibility of the Client
2. The Supplier will provide the Client with the minimum requirements that the infrastructure must meet for On Premise Hosting
3. The Client will ensure that the infrastructure for On Premise Hosting meets the minimum requirements as specified by the Supplier
4. The Client will ensure that the Supplier has access to the infrastructure in order to fulfil the obligations resulting from Agreement(s). Access has to be direct (i.e. the Supplier can access the infrastructure) or indirect (for example by operating the infrastructure on instructions of the Supplier)
5. The Client cannot charge the Supplier for any efforts involved in On Premise Hosting or granting direct or indirect access to the infrastructure
6. The Supplier cannot be held responsible for a sub-standard service resulting from On Premise Hosting

#### **Retainer**

1. The Client is entitled to a guaranteed number of development days per calendar month at a discounted rate, providing that this service element is included in the Agreement
2. The Supplier is guaranteed to have at least the capacity available each month to deliver the Retainer
3. The Supplier is entitled to invoice for the retainer each calendar month even when not the entire Retainer is used. This is providing that the Supplier did have capacity available but the Client opted not to utilize the Retainer capacity
4. The Retainer capacity can be used for any activities related to the System and expertise of the Supplier. Such as, but not perse limited to, development, consultancy, training, etc

5. The Retainer capacity does not have to be used towards bug fixes which are covered by the Support Agreement
6. Retainer capacity that is not used is in principle not transferrable to the next calendar month. Capacity can only be transferred to a following calendar month at the discretion of the Supplier
7. The Supplier is obliged to offer the Retainer capacity within a calendar month but is free to plan the work in during that calendar month
8. The Supplier will quote any work done under the retainer for approval by the Client
9. The Retainer capacity is in principle agreed for a minimum term of 6 calendar month and any changes have a notice period of 3 calendar months

#### **Escrow**

1. The Client is entitled to an Escrow arrangement, providing that this service element is included in the Agreement
2. The Supplier will make a copy of the most recent software available to the Client in a format that allow the Client to reproduce a production environment of the System. This copy is intended only for continuity were the Supplier no longer be able to support the System or were the Agreement be terminated. The Client is not allowed to resell or benefit from the copy other than by operating the System
3. The Supplier and Client may agree to use a dedicated organisation providing Escrow services. The costs of such Escrow service will in principle be carried by the Client

#### **GDPR**

1. The Supplier is held to the UK GDPR legislation and guarantees that it meets all its obligations resulting from the GDPR legislation
2. The Supplier confirms that it has GDPR processing agreements in place with all relevant sub-contractors where applicable

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