

WEIGHTRON BILANCIAI LIMITED
TERMS AND CONDITIONS FOR THE SUPPORT OF SOFTWARE

1 Scope and Interpretation

- 1.1 These terms and conditions (**Terms**) together with the Order Form constitute the contract between the Buyer and Supplier (**Contract**) for the support by the Supplier of the Licensed Software. Separate terms and conditions apply to the supply and maintenance of hardware and the supply and development of software.
- 1.2 In these Terms each capitalised term will have the meaning set out in Schedule 1 (Definitions) or as defined by bold, bracketed text.

2 Orders

- 2.1 The Contract shall take effect on the earlier of the date on which the Order Form becomes signed by both parties and the date when the Supplier takes any action towards fulfilling the Contract (**Commencement Date**). Unless terminated earlier in accordance with its terms the Contract shall continue for the Initial Period and shall automatically renew for successive Renewal Periods. The Buyer may give written notice to the Supplier, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Contract at the end of the Initial Period or the relevant Renewal Period, as the case may be. The Supplier may, at any time by giving the Buyer not less than 30 days' notice in writing, terminate the Contract. The Supplier has no obligation to accept any Order Forms.
- 2.2 The Contract constitutes the entire agreement between the parties in respect of its subject matter. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.3 Any provisions not set out in the Contract, including but not limited to, any the Buyer applies or purports to apply by way of any purchase order/order confirmation or similar document, shall have no application to the support of the Licensed Software by the Supplier, however those provisions are introduced. The Buyer acknowledges and agrees that the Supplier shall not be bound by any such provisions.

3 Cancellation of Contract

- 3.1 Save as provided by clause 2.1 and clause 16.1, the Buyer shall have no right to terminate the Contract. Any deposits or pre-paid Charges paid by the Buyer shall be non-refundable.

4 Supply of Services

- 4.1 The Supplier shall supply, and the Buyer shall pay for, the Standard Support Services and the Optional Services (if set out in the Order Form or otherwise agreed between the parties).

5 Standard Support Services

- 5.1 The Standard Support Services shall be provided by the Supplier during the Standard Support Hours only and shall comprise: (a) a telephone help desk to provide first-line technical support to the Buyer and Licensed Users of the Licensed Software; and (b) remote diagnosis. The Buyer acknowledges that the Standard Support Services do not extend beyond diagnosis and remote support and are subject to the inherent limitations applicable to the remote delivery of such services.
- 5.2 Where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release or New Version, then for a reasonable period before the release of such Maintenance Release or New Version the Supplier may decline to provide assistance in respect of that Non-Critical Fault. The Supplier is under no obligation to supply Maintenance Releases or any New Version. Any Maintenance Release or New Version will be chargeable and subject to the Supplier's terms and conditions for the supply and development of software.
- 5.3 The Supplier may, on prior notice to the Buyer, make changes to the Standard Support Services, provided such changes do not have a material adverse effect on the Buyer's business operations.
- 5.4 The Supplier shall provide sufficient Support Staff to fulfil its obligations in respect of the Standard Support Services. The Support Staff shall be suitably trained and experienced in the support of the Licensed Software.
- 5.5 The Supplier shall have no obligation to provide the Standard Support Services in relation to Excluded Faults.
- 5.6 If the Buyer repeatedly requests support in relation to the same query or fault, or other requirement, and if the Supplier has previously provided the Buyer with the relevant information or instructions as to how to resolve or workaround such issue, the Supplier may treat such support as an Optional Service provided in accordance with clause 6.

6 Orders for Optional Services

- 6.1 The Buyer may from time to time request the Supplier to supply Optional Services in addition to any Optional Services set out on the Order Form. The Supplier is not obliged to perform any Optional Services, save for those Optional Services set out on the Order Form.
- 6.2 Any Optional Services delivered by the Supplier shall be made under, and shall incorporate, these Terms.
- 6.3 Any on-site support or other on-site services required by the Buyer will be delivered as an Optional Service.
- 6.4 Save as expressly provided for on the Order Form, Optional Services shall be charged at the Standard Rates for each of the Supplier's personnel reasonably required to provide such Optional Services. Travel time and expenses shall also be payable in addition at the Supplier's then applicable rates.

- 6.5 The Supplier shall use reasonable endeavours to perform the Optional Services within a reasonable time.

7 New Versions and Maintenance Releases

- 7.1 If the Supplier releases a New Version or Maintenance Release and the Buyer decides not to acquire and install such New Version or Maintenance Release, that decision shall not give rise to any right of the Buyer to terminate the Contract. If the Supplier has released a New Version or Maintenance Release since the version which forms part of the Licensed Software and the Buyer has not, within 12 months of the release of such New Version or Maintenance Release acquired and installed that New Version or Maintenance Release, then the Supplier may terminate the Contract by giving the Buyer notice in writing.

8 Charges and payment

- 8.1 The Charges shall be as set out on the Order Form or, if no Charges are set out on the Order Form, the Charges shall be calculated in accordance with the Standard Rates. Any Charges stated are exclusive of VAT and any other import taxes, duties or other similar charges which the Buyer shall also pay.
- 8.2 The Supplier may increase its Charges on each anniversary of the Commencement Date and any such increase will be reflected in the next invoice issued to the Buyer. Any increases implemented by the Supplier shall be capped in line with the greater of the percentage increase in the Consumer Prices Index during the previous year and 4%.
- 8.3 The Supplier shall raise invoices for the Charges in accordance with the timings stated on the Order Form save that, where no timings are stated on the Order Form in respect of any Services, the Supplier may raise invoices at such intervals as the Supplier reasonably determines. The Buyer must pay all invoices in cleared funds by payment into the bank account nominated by the Supplier before the end of the calendar month in which the invoice was raised.
- 8.4 The Buyer shall also pay all costs (at the Standard Rates) and reasonable expenses incurred by the Supplier in connection with any Excluded Faults.
- 8.5 If the Buyer fails to pay any sum due under the Contract by the due date for payment then the Supplier shall be entitled to charge interest on the overdue amount at the rate of 5% per annum above Lloyds Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment, whether before or after judgment.

9 Warranties

- 9.1 The Supplier warrants to the Buyer that the Services will be performed with reasonable skill and care.
- 9.2 Subject to clause 9.3, if, during the period of 90 days following delivery of any Services the Buyer gives written notice to the Supplier of any breach by the Supplier of the warranty contained in clause 9.1 in respect of such Services, the Supplier shall, at its own option and expense, either re-perform or make good the defective Service. This clause sets out the Buyer's sole remedy and the Supplier's entire liability for breach of clause 9.1.
- 9.3 The Supplier's obligations under clause 9.2 are strictly subject to:
- 9.3.1 the Buyer having promptly notified the Supplier upon discovery of the breach; and
- 9.3.2 the Supplier, acting reasonably, determining that the Services were not performed in accordance with clause 9.1.
- 9.4 No representation or warranty is given by the Supplier that faults will be fixed, that the Services will provide a resolution to any defects or faults, or that Services will be delivered within a specified period of time. All dates and times specified by the Supplier for the provision of the Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery of the Services beyond such approximate dates.
- 9.5 Except as provided in this clause 9, the Supplier shall have no liability to the Buyer in respect of the Supplier's failure to comply with the warranty set out in clause 9.1. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract whether by statute, common law or otherwise, are hereby excluded.
- 9.6 Each party warrants that it has the full capacity and authority and all necessary permits, licences and consents necessary to enter into the Contract and that those signing the Contract are duly authorised to bind the party for whom they sign.

10 Buyer's obligations

- 10.1 The Buyer shall:
- 10.1.1 take all reasonable steps to ensure that the Licensed Software is operated in a proper manner;
- 10.1.2 co-operate with the Supplier in its performance of the Services and provide any assistance and information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
- 10.1.3 ensure that its Licensed Users are trained in the proper use and operation of the Licensed Software;
- 10.1.4 report faults promptly to the Supplier;

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- 10.1.5 keep full backup copies of all of its data to ensure recovery of its data if the Licensed Software malfunctions;
- 10.1.6 ensure that the relevant premises is suitably prepared in accordance with the Supplier's instructions for any Optional Services to be delivered on site and is safe for entry by the Support Staff;
- 10.1.7 provide such full, safe and uninterrupted access (including remote access) to the Buyer's premises, systems, facilities and the Licensed Software as may reasonably be required for the purpose of performing the Services and, where the Optional Services are to be performed at any of the Buyer's premises, the Buyer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety;
- 10.1.8 obtain and install at its own cost such remote access software and applications as required by the Supplier from time to time;
- 10.1.9 obtain and maintain at its own cost all necessary licences, permissions and consents required in relation to the Services; and
- 10.1.10 nominate a manager to be available to liaise with, and respond to queries from, the Supplier.
- 11 Relief Events**
- 11.1 The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from any events, circumstances or causes beyond its reasonable control including, without limitation, acts of God; natural disasters; terrorist attacks; civil war, commotion or riots; imposition of sanctions or embargos; any law or action taken by a governmental or public authority (including without limitation export or import restrictions, quotas or prohibitions); failure to obtain or renew, or the cancellation of, any licence, permit or consent; collapse of buildings; unavailability, interruption or failure of utility supplies; failure in internet connection or other inability to remotely connect to the Buyer's systems; labour or trade disputes, strikes or industrial action; and non-performance by suppliers or subcontractors (**Force Majeure Event**).
- 11.2 If any act or omission of the Buyer (including without limitation the Buyer failing to comply with its obligations under the Contract) causes or contributes to the Supplier failing or being delayed in performance of any obligation under the Contract, or if the Buyer fails to make any payment to the Supplier when due under the Contract, (**Relief Event**), the Supplier shall without limiting its other rights or remedies:
- 11.2.1 have the right to suspend performance under the Contract until the Buyer remedies the default; and
- 11.2.2 have the right to rely on the Relief Event to relieve it from the performance of any such obligation; and
- 11.2.3 have no liability howsoever arising from the Supplier's failure or delay in performing any such obligation.
- 11.3 The Buyer shall reimburse the Supplier on written demand for any Losses sustained or incurred by the Supplier arising from a Relief Event.
- 12 Intellectual Property**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (including, without limitation, any Intellectual Property Rights arising from or related to any training or training materials delivered by the Supplier) shall be owned by the Supplier.
- 13 Data Protection**
- 13.1 Each party undertakes to comply with the Data Protection Legislation and all applicable laws and regulations relating to the processing of personal data or privacy or any amendments and re-enactments thereof, and shall procure that its employees, agents and subcontractors shall observe the provisions of the same.
- 14 Indemnities**
- 14.1 The Buyer shall indemnify (and keep indemnified) and hold harmless the Supplier against any Losses arising from or in connection with a breach by the Buyer of its obligations under clause 10.
- 15 Liability**
- 15.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:
- 15.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 15.1.2 fraud or fraudulent misrepresentation; or
- 15.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 15.2 Subject to clause 15.1:
- 15.2.1 the Supplier shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit (direct or indirect), loss of business or business opportunities, or any loss or corruption of data or information, loss of production, loss of (or loss or liability under) other contracts, loss of revenue or loss of anticipated savings, or any indirect or consequential loss arising under or in connection with the Contract; and
- 15.2.2 the Supplier's total liability to the Buyer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total amount of Charges paid by the Buyer for the Services during the twelve (12) month period immediately preceding the date on which the cause of action first arose or, if the claim arose during any period before 12 months has elapsed from the Commencement Date, during that shorter period.
- 16 Termination**
- 16.1 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 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 twenty-one (21) days of that party being notified in writing to do so.
- 16.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer:
- 16.2.1 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 any such step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 16.2.2 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 16.2.3 the Buyer's financial position deteriorates to such an extent that in the Supplier's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 16.2.4 the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment.
- 16.3 Where the Supplier is entitled to terminate the Contract under this clause 16 it shall also be entitled to terminate any other contracts with the Buyer.
- 16.4 Termination of the Contract shall not affect either parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 16.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 16.6 On termination of the Contract for any reason:
- 16.6.1 the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied and any costs or expenses already incurred by the Supplier but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 16.6.2 the Buyer shall return, destroy or permanently erase any Confidential Information belonging to the Supplier; and
- 16.6.3 the Buyer shall return all of the Supplier's materials and equipment and if the Buyer fails to do so, then the Supplier may enter the Buyer's premises and take possession of them.
- 17 General**
- 17.1 **Confidentiality.** Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 17.2.
- 17.2 Each party may disclose the other party's Confidential Information:
- 17.2.1 to its employees, officers, representatives or advisers (and in the case of Supplier being the recipient of the Buyer's Confidential Information, to its agents, Affiliates and subcontractors) who need to know such information for the purposes of exercising the party's rights or performing its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses such confidential information comply with clause 17.1; and
- 17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.3 No party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

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17.4 The Supplier may refer to the Buyer as being a client of the Supplier in any customer reference lists, sales presentations, advertising or press releases without the prior written consent of the Buyer.

17.5 **Assignment and other dealings.** The Buyer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

17.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.7 **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 waive that or any other right or remedy; nor prevent or restrict the further exercise of that or any other right or remedy.

17.8 Dispute Resolution.

17.8.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause 17.8:

17.8.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents;

17.8.1.2 following service of the Dispute Notice, the parties shall use reasonable endeavours to promptly resolve the Dispute by way of without prejudice discussions between the relevant representatives in accordance with the following escalation levels and timescales:

Escalation Level	Supplier representative	Buyer representative	Time for resolution
1	Service Manager	Manager	10 Business Days
2	Service Director	Director	5 Business Days
3	Managing Director	Managing Director	5 Business Days

and

17.8.1.3 if, for any reason, the parties are unable to resolve the Dispute within the timescales and escalation levels referred to in clause 17.8.1.2, or should either party fail to engage or cease its engagement in that process, then the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.13.

17.8.2 Nothing in clause 17.8 shall prevent the Supplier from commencing Court proceedings in accordance with clause 17.13 at any time.

17.9 **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.

17.10 **Notices.** 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 notified to the other party, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the relevant address; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

17.11 The provisions of clause 17.10 shall not apply to the service of any proceedings or other documents in any legal action.

17.12 **Third party rights.** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

17.13 **Governing law and jurisdiction.** 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 laws of England and Wales

and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

SCHEDULE 1

Definitions

- Affiliate** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
- Business Day** any a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- the Buyer** the entity identified as such on the Order Form;
- Charges:** the charges payable for the Services under the Contract, as may be amended from time to time in accordance with the provisions of clause 8.2;
- Confidential Information** information of commercial value and any confidential or proprietary information, in whatever form or medium, disclosed by a party (or any of its Affiliates) to the other party (or any of its Affiliates) including, without limitation, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to business affairs, customers, suppliers, pricing and marketing and, for clarity, including (in the case of the Supplier's information) information relating to the Services, the Licensed Software or any of its constituent parts;
- Critical Fault:** a reproduceable fault which substantially hinders or prevents the Buyer from using a material part of the functionality of the Licensed Software in question;
- Data Protection Legislation** all applicable data protection laws and regulations in any jurisdiction;
- Documentation:** the documents provided by the Supplier in relation to the Licensed Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual;
- Excluded Faults** any faults arising from: (a) misuse, incorrect use of or damage to the Licensed Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power; (b) failure to maintain the necessary environmental conditions for use of the Licensed Software; (c) use of the Licensed Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with the Licensed Software, or any fault in any such equipment or software; (d) any modification of the Licensed Software not authorised by the Supplier; (e) relocation or installation of the Licensed Software by any person other than the Supplier or a person acting under the Supplier's instructions; (f) any breach of the Buyer's obligations under the Contract howsoever arising; (g) the Licensed Software being maintained by a third party; or (h) operator error;
- Final Quotation:** the final agreed written quotation and accompanying documents and proposal provided to the Buyer;
- Initial Period:** 36 months from the Commencement Date;
- Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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

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	protection which subsist or will subsist, now or in the future, in any part of the world;
Licence:	the terms and conditions for the supply and development of software entered into between the parties;
Licensed Software:	has the same meaning as in the Licence;
Licensed Users:	has the same meaning as in the Licence;
Losses	means all liabilities, costs, expenses, damages, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses and any indirect or consequential losses);
Maintenance Release:	a release of the Licensed Software which corrects faults, adds functionality or otherwise amends or upgrades the Licensed Software, but which does not constitute a New Version;
New Version:	any new version of the Licensed Software which from time to time is marketed and/or offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
Non-Critical Fault:	any reproducible fault in the Licensed Software other than a Critical Fault;
Optional Services:	any software related services which the Supplier provides to the Buyer which are not Standard Support Services and including, without limitation, any services required to be delivered at the Buyer's premises, any services provided on a one-off basis and any training delivered by the Supplier;
Order Form	the order form attached to or accompanying these Terms;
Renewal Period:	each successive 12-month period after the Initial Period for which the Contract is renewed;
Services:	the Standard Support Services and any Optional Services;
Standard Rates	the Supplier's standard rates as may be amended from time to time including, without limitation, its standard hourly rates, any rates that apply in relation to travel time and rates applicable to holiday, weekend, and out of hours work;
Standard Support Services	the standard support helpdesk and remote diagnosis services to be delivered by the Supplier, as set out in more detail in the Order Form and/or the Final Quotation;
Standard Support Hours:	the hours between 8:00am and 5:00pm GMT on a Business Day;
Support Staff:	those individuals (whether employees, consultants or other representatives of the Supplier or its subcontractors) who perform the Supplier's obligations under the Contract; and
the Supplier:	Weightron Bilancai Limited.