

# 1. EMIR-Cloud Hosted Server Terms and Conditions

- 1.1 The EMIR-Cloud solution is administered by Solutions In I.T. Limited with all server administration and virtual services provided by their cloud partner **I-Dash Limited**.
- 1.2 Table 1 (below) describes the equipment, software and services that are supplied as part of the EMIR-Cloud solution. Not all EMIR-Cloud installations use all of these elements and other parts may be added as needed. Personnel authorised to agree changes and a limited number of named/con-current users approved to use helpdesk support will be included in table 1 when the contract is finalised. Particular information purporting to equipment size and capacity will be included in each individual contract.

Table 1. Support Services
<b>Potential Equipment Utilised</b>
RDP Servers App Server Domain Controller File Server Controller Disk Storage
<b>Microsoft Server Licences</b>
Server Licences 2016
<b>Microsoft QMTH SCA User Licences</b>
Office 365 E3 to SCA/QMTH system
<b>Terminal Server Access Licences</b>
Terminal Server Cals
<b>Anti-Virus Protection</b>
BitDefender Endpoint Security Protection – for user and server protection
<b>Data Backup and Server Imaging</b>
Remote Cloud backup with 90 days data retention
<b>Protect Administration – Support &amp; Maintenance of VM Farm Solution</b>
Unlimited Email and Telephone support to cover normal running of the server and maintenance of the operating system during office hours.

- 1.3 Table 2 (below) explains the limit of the EMIR-Cloud service and details excluded items that **fall outside of the scope of the EMIR-Cloud service, but can be purchased as additional services if/when required.**

Table 2. Additional Services outside the scope of the EMIR-Cloud contract
<b>Reactive Administration</b> – This is additional server administration that falls outside of the scope of Protect Administration, which includes (and is not limited to), the installation of additional software used in the business (not Microsoft Office, Terminal Services or EMIR), the installation of new EMIR Modules and Extensions or activation of Users, additional Microsoft Office and Terminal Services users (not part of the EMIR system).
<b>Desktop Support</b> – The EMIR-Cloud service does not include support for desktop, laptop and mobile devices on the client site. Neither Solutions in I.T. Ltd or I-Dash Ltd offer support and would suggest a separate arrangement for this service.
<b>Security &amp; Virus Protection [Non-Server]</b> – Virus, Malware and Firewall protection are all included in the EMIR-Cloud service, this protection however, does not cover client-side devices, such as desktop, laptops, mobile devices or additional servers that may still be used. Solutions In I.T. Ltd recommend that all devices are maintained with a suitable and reliable protection system.
<b>Application Training</b> – The EMIR-Cloud service does not include training on the EMIR application or other software resident on the server, such as Microsoft Office, Terminal Services, Email or additional packages added as part of your support agreement.
<b>EMIR Support &amp; Maintenance</b> – The EMIR Support & Maintenance Programme is covered under a separate agreement and annual fee structure. (9am to 5pm, excluding bank holidays)

# Support Terms & Conditions

## 2. Definitions and Interpretation

2.1 In these Support T&Cs the following expressions have the following meanings:

Expression	Meaning
<b>Administrators</b>	The Client’s personnel identified in Table 1 who are authorised to agree changes to the scope of the Support Services and to administer this Support Agreement
<b>Charges</b>	The Charges set out in the Table on Page 1 and any additional charges due under sections 3.4 or 3.7
<b>Desktop Users</b>	The limited number of [named/concurrent] Client personnel authorised to use the Helpdesk and receive the Remote Desktop Module Service set out in Table 1
<b>Fault</b>	Any material discrepancy between a Specification and a Deliverable
<b>Liability Cap</b>	The total 6-monthly Advance Payment set out in the Table on Page 1 unless increased under paragraph 6.3
<b>Loss</b>	Loss of data, reputation or goodwill and any financial loss including (but not limited to) loss of profit, damages, expenses, costs or other claim for compensation and legal or other expenses incurred in preparing, issuing and conducting any claim or proceedings.
<b>Notice</b>	Notices must be sent by e-mail and a confirmed response or read receipt is satisfactory proof of delivery; the term Notify shall be construed accordingly
<b>Priority</b>	The level of importance assigned by Solutions in I.T. to any Fault in accordance with the following schema: <b>Priority 1:</b> a Fault that materially affects the Client’s ability to process and output accurate and usable data. <b>Priority 2:</b> a Fault that meets the criteria for a Priority 1 Defect but where a temporary work-around can be deployed within a reasonable time. <b>Priority 3:</b> a minor Fault or a request for assistance the answer to which does not materially affect Client’s staff from performing critical tasks
<b>Service Levels</b>	<b>Priority 1:</b> Response within one hour. All available suitably qualified Solutions in I.T. engineering staff will be dedicated to fixing the problem within a target resolution time of 4 working hours. <b>Priority 2:</b> Response within four hours. One suitably qualified member of Solutions in I.T. engineering staff will be dedicated to fixing the problem within a target resolution time of 5 working days. <b>Priority 3:</b> Response within 1 working day. Defects in this category will be fixed during routine maintenance normally within 10 working days
<b>Service Credits</b>	See section 5.3
<b>Support Desk</b>	For email queries and fixes on the EMIR application and all Extensions, please call <b>FHG</b> on <b>0845 130 2172</b> or via <a href="mailto:support@solutionsinit.com">support@solutionsinit.com</a>  For Cloud Hosting, Dashboard and Remote Backup queries, please call us on <b>01858 414 238</b> or email <a href="mailto:support@solutionsinit.com">support@solutionsinit.com</a>
<b>Support Hours</b>	For sales support and pricing or anything else(!), please call us on <b>0845 009 4588</b> 09:00 to 17:00 on working days. Notifications received after 4:00pm will be deemed received the next following working day.
<b>System</b>	The hardware and communications set out in Table 1
<b>Unexpected Event</b>	An event outside a party’s reasonable control.
<b>Website</b>	<a href="http://www.emirsoftware.com">www.emirsoftware.com</a>

2.2 Working day means any weekday other than public holidays in England & Wales.

2.3 Where the word “including” is followed by a list of examples it will deemed to be followed by the words “but not limited to”.

### 3. Support Services

- 3.1. The Support Agreement comprises the details set out in the Table on Page 1 and these Support T&Cs.
- 3.2. The contract for the Support Services begins at 9:00 am on the Start Date and runs for one year, following which it will automatically renew for further periods of 6 months unless terminated by either party by giving a Notice at least 1 month in advance of the renewal date.
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- 3.3. Solutions in I.T. obligations to provide the Support Services are restricted only to:
  - a. Responding to Faults notified by Desktop Users and Administrators; and
  - b. Faults in those Systems listed in Table 1
- 3.4. The Client's Administrators may request Solutions in I.T. to extend the scope of the Support Services to additional Desktop Users or Systems and in such a case Solutions in I.T. will promptly notify the Client of any impact on the Charges. If the Client accepts the revised Charges Solutions in I.T. will issue a revised Support Agreement with the updated details included in a revised Table.
- 3.5. Solutions in I.T. will provide the Support Services listed in the Table on Page 1 with diligence, professionalism and skill
- 3.6. The Client's Desktop Users and Administrators may report Faults to Solutions in I.T. by telephone or e-mail ([support@solutionsinit.com](mailto:support@solutionsinit.com)) to the Support Desk. Solutions in I.T. will log the Fault and assign a Priority in accordance with the schema in the Definitions Table in Section 1. The Priority will be communicated to the person who notified the Defect within the period applicable to the assigned Priority Level. Solutions in I.T. will use all reasonable efforts to meet the target resolution times in the Service Levels but the Client acknowledges that remote diagnostics may not always provide sufficient information to allow complete diagnosis for every fault.
- 3.7. If Solutions in I.T. is unable to diagnose the Fault remotely then Solutions in I.T. will notify an Administrator of the nature of the fault and advise upon any steps or tests that the Client should carry out to assist Solutions in I.T. to diagnose and fix the Fault. If these steps or tests are unsuccessful then Solutions in I.T. personnel will attend at the Client's Site but on-site support is not included in the Charges and therefore additional Charges will be due at Solutions in I.T.'s then current standard rates.
- 3.8. The Client grants Solutions in I.T. permission to access the Systems remotely and the Client's premises for on-site support in order to carry out the Support Services.
- 3.9. The Client will ensure that Desktop Users and Administrators will keep any passwords issued by Solutions in I.T. secure and in particular will not allow Desktop Users to transfer or permit each other to use such passwords.

### 4. Fees and Payment

- 4.1. Solutions in I.T. will issue a valid VAT invoice for the Charges in Table 1 on the Start Date and [less any deduction for Service Credits] in advance of each following 1-month period. Any Charges under section 3.7 will be invoiced when the work to which they relate is complete.
- 4.2. The Client will pay Solutions in I.T.'s invoice within 14 days of the invoice date unless paid by direct debit taken 30 days from the invoice date. Solutions in I.T. may charge interest and administration costs on late payments at the rate prescribed from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.3. Solutions in I.T. may suspend the Support Services during any period during which Solutions in I.T.'s invoice remains unpaid after the due date.

### 5. Breach of Agreement

- 5.1. Either party ("A") may terminate the Support Agreement by Notice to the other ("B") in the following circumstances:
  - (a) B commits a material or persistent breach of the Support Agreement which is not remedied (or, if it cannot be remedied, compensated for) to A's reasonable satisfaction within 30 days of Notice of the breach;
  - (b) Either party becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction) passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt.
  - (c) An Unexpected Event persists for more than 30 days.

- 5.2 Solutions in I.T. will collect information on Service Levels and issue a summary to the Client setting out the statistics below. If Solutions in I.T. fails to meet the Target #1 Service Levels in any rolling period of six months, then Solutions in I.T. will deduct Service Credits calculated in accordance with the Table below.
- 5.3 If Solutions in I.T. fails to meet the Target #2 Service Levels then the Client may (but is not obliged to) terminate this Support Agreement by giving Notice to Solutions in I.T..

Service Level	Target #1	Service Credit	Target #2
Priority 1	100%	5% of Charges per 1% below target	95%
Priority 1	95%	2.5% of Charges per 1% below target	90%
Priority 1	90%	1% of Charges per 1% below target	85%

Solutions in I.T.'s liability to the Client for Losses arising from breach of the Service Levels are limited to the Service Credits.

## 6. Limits and Exclusions of liability

- 6.1 Nothing in the Support Agreement excludes or limits the liability of either party for fraudulent misrepresentation, for death or personal injury caused by its negligence, or for any civil remedy based on any successfully prosecuted criminal act.
- 6.2 Each party's maximum aggregate liability to the other for Losses under or in connection with the Support Agreement (or any collateral agreement) in contract, tort (including negligence) or otherwise is limited to the amount of the Liability Cap.
- 6.3 The Client may request an increase to the Liability Cap in favour of the Client in return for an increment to the Fees of 5% for each whole number multiple of the Liability Cap. Any higher limit agreed under this Section will be recorded in the Table on page 1 but this will not affect the Liability Cap as it applies to the Client's liability to Solutions in I.T..
- 6.4 Neither party shall be liable to the other for any Losses that are not reasonably foreseeable as flowing directly from a party's breach of contract or tortious act and both parties acknowledge they have not advised the other of any specific indirect losses they may suffer as the result of the other's breach of contract or tortious act.
- 6.5 The Client the fact that Solutions in I.T. has agreed to provide the Support Services does not give rise to any warranty that Solutions in I.T. considers the System to be adequate or suitable for the Client's Requirements and Solutions in I.T. is not obliged to provide advice or recommendations for improvements to the System unless specifically requested by the Client (for which additional Charges may apply).
- 6.6 Liability for infringement of intellectual property rights shall be limited to breaches of rights subsisting in the UK.
- 6.7 There are no conditions, warranties, representations, duties or other terms, express or implied, that are binding on Solutions in I.T. Limited except as specifically stated in this Support Agreement. Any condition, warranty, representation, duty, collateral contract or term which might otherwise be implied into or incorporated in this Support Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- 6.8 Nothing in this Section 6 affects Solutions in I.T.'s right to recover unpaid Charges

## 7. Confidentiality

- 7.1 Both parties will keep all information that is confidential to, or trade secret of, the other that they become privy to during the term of the Support Agreement suitably protected and safe to the standard that a reasonable businessman would take in respect of his own confidential information.
- 7.2 All confidential information in physical form will be kept under lock and key and information held electronically will be kept on password protected computer equipment
- 7.3 The obligations in this section will not apply to information that is in the public domain or that is lawfully demanded from a party by the courts, a government or regulatory body with the legal power to demand the same, save that in such circumstances (where legally permitted to do so) the party from which demand is made will inform the other in sufficient time to allow the other to take steps to resist any such disclosure.

## 8. Unexpected Events

- 8.1 Neither party will be liable to the other for any failure to perform, or delay in performance of, any obligations under the Support Agreement to the extent that such failure or delay results from an Unexpected Event.
- 8.2 A party's performance under the Support Agreement is deemed to be suspended for the period that the Unexpected Event continues.

## 9. General

- 9.1 If a disagreement arises under the Support Agreement then the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate mediation a party must give Notice in writing to the other requesting mediation. A copy of the request should be sent to CEDR.
- 9.2 The mediation will start not later than 10 working days after the date of the notice under paragraph 9.1
- 9.3 The parties will bear their own costs of attending the mediation.
- 9.4 If any of the terms of the Support Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 9.5 The Support Agreement and any document expressly referred to in it represents the entire agreement between the parties and supersedes any prior agreement, understanding or arrangement whether oral or in writing.
- 9.6 Neither party has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations prior to entering into the Support Agreement except as expressly stated in the Support Agreement or any document expressly referred to in it.
- 9.7 Neither party has any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of the Support Agreement (unless such untrue statement was made fraudulently) and a party's only remedy shall be for breach of contract as provided in these terms and conditions.
- 9.8 No term of the Support Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Support Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 9.9 The Support Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and (subject to paragraph 9.1) the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim.