



## GENERAL TERMS AND CONDITIONS

These general conditions are an integral part of any specific contracts with SILICON DNA S.A. (SDNA) and are applicable unless otherwise expressly stated in an agreement.

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## **1. GENERAL TERMS AND CONDITIONS**

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### **1.1. APPLICATION**

General terms and conditions are applicable for all types of agreements.

### **1.2. VALIDITY OF OFFERS**

All proposals are valid for a period of thirty days from their issue date.

### **1.3. CONFIDENTIALITY**

SDNA will keep confidential any information and documentation acquired during the course of the project, unless such information is of public knowledge, and will not disclose this to any third party unless consent is given by the client.

### **1.4. INTELLECTUAL PROPERTY RIGHTS**

SDNA stays in any case the owner of the expertise provided to the client during the contract as well as of ideas and inventions and in general of any computer transcriptions so that SDNA can use them in other projects. SDNA reserves the right to use all the knowledge it has learned from analysis and work entrusted to him unless this knowledge is part of the intellectual property rights of the client or other third party.

However, data, programs and information which are part of the public domain, either because they were developed independently or because they have been obtained by legitimate means, will not form part of SDNA's intellectual property rights.

### **1.5. DECISION TO START**

The decision to start live operation of the product rests with the Client. The Client must therefore take all necessary measures beforehand to ensure the full and proper functioning of the solution prior to its live implementation.

### **1.6. BACKUP OF DATA**

The client is responsible for security copies (backup) of all information in its computer systems. If because of lack of backup, SDNA had to intervene to restore information, the related interventions will in all cases be charged to the client at the applicable rates at the time of the intervention.

### **1.7. MISCELLANEOUS INSURANCES**

Since the client has an obligation to protect its data, the client waives SDNA's responsibility in case of damage occurring to files and other documents that the client may have delivered to SDNA for processing. It will be the client's responsibility to subscribe to appropriate insurance against this risk as well as against various risks including fire, explosion and water damage that may occur. If necessary, the client will cover himself against these risks by creating a duplicate copy of such documents.

The client is responsible for any damage caused to the property or personnel of SDNA, as well as to the personnel or property of any third party, when such damages are caused by negligence or inconsistency of the client.

### **1.8. LIMITATION OF LIABILITY**

SDNA's liability will be limited to the correction of errors in the software and SDNA liability will be limited to the amounts paid. SDNA will not be liable for the compensation of indirect damages, that

is to say, financial or commercial damage (loss of earnings, increased overheads, change of schedule, loss of profits, goodwill or anticipated savings, etc.) and for any claims made by a third party against the client. Similarly, SDNA shall not be liable if the services provided under an agreement could not be executed in whole or in part for reasons beyond its control. Any action involving the responsibility for SDNA must begin within three months after the occurrence of the facts justifying such action. In any case SDNA must be notified of such incidents immediately these become known to the client.

#### **1.9. IMPLEMENTATION SCHEDULE**

If an Implementation Plan has been set, it may be affected by the following:

- Additional work requested during analysis.
- Delay in validating the analysis.
- Unavailability of client personnel to perform the analysis or the study in collaboration with SDNA.
- Unavailability of the computer system at the client site.
- Force majeure.

The deadlines in the completion of tasks as set forth in the agreement and/or the accepted proposal will be met by SDNA to the best of its ability without the non-compliance of deadlines could ever lead the client to any compensation or the unilateral termination of the agreement.

#### **1.10. MODIFICATION OF AGREEMENT**

The fees are based on the solution described in the specific agreement. If during the analysis or study, additional modules or additional work should be added, the cost would be adjusted accordingly.

#### **1.11. TRANSFER OF AGREEMENT**

The client may not transfer or pledge the agreement or any rights or obligations hereunder without prior written consent of SDNA.

#### **1.12. BREACH OF AGREEMENT**

If, after signing this agreement, the client decides not to install the solution or stop the installation, SDNA will charge the client, in addition to the payment installments foreseen in the agreement, a compensation equivalent to 20% of the total price of the agreement. This compensation will be charged to the client as soon as the breach of agreement is notified to SDNA.

The agreement will also be automatically terminated in case of bankruptcy and/or agreement with creditors.

#### **1.13. TERMS OF PAYMENT**

All SDNA invoices are payable within 30 days from the invoice date without discount to SDNA's bank account, bank charges to be paid by the client.

Non-payment of an invoice by its due date shall imply the right of automatic suspension of contractual obligations by SDNA without further notice, while client commitments will remain valid.

An interest rate of 6% will be applied without notice on any invoice not paid on its due date.

#### **1.14. BILLING ADDRESS**

If the billing address is different from delivery address, the client will communicate in writing the details to SDNA.

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#### **1.15. MODIFICATION OF GENERAL TERMS**

SDNA reserves the right to modify these general terms and conditions even during the life of the agreement. The new text will be sent to the Client who will have a 30 days period to communicate any comment. If the client does not accept the new terms and conditions SDNA will have the right to apply these new conditions to new projects.

#### **1.16. PERSONNEL PROTECTION**

Unless prior written consent is given, both parties expressly agree not to engage or attempt to engage, directly or indirectly, or through intermediaries, in any form whatsoever, any member of staff of the other party. This prohibition applies regardless of the circumstances of departure of the staff member/s. After a continuous period of three years without any service provided by the staff member to either party, this clause will no longer be valid.

Any breach of this provision will automatically and without further notice imply a compensation for the damage, equivalent to twelve months of total salary costs (salary + all charges relating to the person) of that person at the time of his departure, without prejudice to damages and greater interest if applicable.

#### **1.17. PRICES**

The prices are defined in specific agreements and offers.

#### **1.18. ADDITIONAL COSTS**

Additional costs include travel and living expenses of employees of SDNA.

They will be charged to the client at the applicable rates. These costs are never part of the price (software, specific developments, ...). These costs cover the actual costs of travel and idle time of employees of SDNA during the trip.

#### **1.19. LITIGATION**

This agreement is subject to Malta laws and in case of litigation, the courts of Malta shall be competent.

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## **2. SOFTWARE**

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### **2.1. APPLICATION**

The terms of this Chapter shall apply to all software license agreements sold by SDNA.

### **2.2. LICENSE**

The prices of licenses for software are defined in specific agreements license.

### **2.3. CLIENT TECHNICAL ENVIRONMENT**

Before installing software, the client must provide SDNA, with all the necessary information relating to hardware(s) and operating system (s).

### **2.4. OBLIGATIONS OF SDNA**

SDNA guarantees that the software offered conforms in all essentials to all the specifications submitted by SDNA.

Client agrees, however, that it is virtually impossible in the software industry to provide products totally free of error. The obligations of SDNA therefore analyzed as an obligation of means. Possible corrections to the software are covered by the maintenance agreement.

### **2.5. SOURCES**

The source code of the software is owned by the Editor, namely SILICON DNA S.A. Source Code for the software programs are never delivered to the client, and the client does not have any right of ownership and right to have access to such source code.

### **2.6. INTELLECTUAL RIGHTS**

Methods, models, descriptions, computations, specifications, software and sources, including documentation are the exclusive property of SDNA. As such the client is only granted the right of limited use. This right may not be sold, transmitted or made available to third parties without the explicit authorization of SDNA.

### **2.7. RECEPTION**

The validity of the software is evaluated by the client after extensive testing done by the client within 30 days at the latest after the delivery, or as otherwise agreed formally between SDNA and the client. In the absence of a written reservation made by the client, the software will be considered as approved within thirty days after delivery.

### **2.8. PRICES**

The prices are defined in the license agreements.

### **2.9. BILLING CONDITIONS**

The terms of billing software are standard:

50% at order.

50% on the delivery (installation) of the software

### **2.10. TERMS OF PAYMENT**

Non-payment of an invoice by the due date will automatically suspend the right to use the license.

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### 3. MAINTENANCE

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#### 3.1. APPLICATION

The provisions of this chapter constitute the maintenance agreement in its integrality.

#### 3.2. OBLIGATION TO SUBSCRIBE

Subscription to the maintenance agreement is mandatory for all software acquisitions. Otherwise, the client loses the right to use the application software.

#### 3.3. SCOPE OF MAINTENANCE

The maintenance agreement covers legal adaptations in the basis version, the correction of errors, FTP delivery (patch and bug fixes) and the delivery of new releases.

The maintenance agreement also includes the guarantee of the availability of at least one of SDNA's personnel being conversant with the software(s).

#### 3.4. ANNUAL FEE

The cost of maintenance is equal to an anticipatory annual fee (billed at the beginning of the period covered) corresponding to a percentage of the official price of the software license. Unless otherwise stated in the license agreements, the cost of maintenance amounts to 20% of the official price of the license. Maintenance is mandatory with no exception.

The first charge will be calculated PRORATA TEMPORIS from the delivery date of the software until year-end.

The second and subsequent yearly fee will be charged at the beginning of each calendar year.

#### 3.5. CORRECTIONS OF ERRORS

SDNA guarantees the correction of errors only after receiving a written intervention request justified by an accurate description of the error and supported by a maximum of documentation (listing, print screen, etc.).

If there is a message being processed by a function of the software and the client responds to the error message on its own instead of calling SDNA and this leads to necessary interventions by SDNA, these interventions will in all cases be charged and billed to the client at the rate in effect at the time of the intervention.

If the error cannot be reproduced by the client, although SDNA will still investigate the report of the error, SDNA will not be able to commit to fix the error.

The client has the obligation to test the error fixes and inform SDNA whether such fixes have solved the error.

#### 3.6. TIME OF RESPONSE

SDNA commits to intervene on average within 8 hours from the receipt of the request depending on the urgency of the request and except in case of force majeure.

### **3.7. SERVICES NOT INCLUDED IN THE MAINTENANCE**

Installation costs and training for new software releases are not included in this agreement, as well as upgrade costs in the case of specific developments.

Phone support (Hot Line), up to a quarter of an hour per call, is included in maintenance.

### **3.8. DEADLINE FOR INSTALLING A NEW RELEASE**

The client agrees to install new software releases not later than one year after they become available.

### **3.9. PRICE REVISION**

The cost of maintenance is adjusted annually as of January 1<sup>st</sup> in accordance with the changes in the consumer price index.

### **3.10. TERMINATION OF THE AGREEMENT**

#### **3.10.1. BY CLIENT**

If the software is no longer used by the client, the client can cancel the maintenance agreement with a 6-months' notice before December 31 of each year. The maintenance annual fee will apply to final maturity.

#### **3.10.2. BY SDNA**

SDNA reserves the right to stop the support or evolution of one (or more) software(s). In this case, it will notify the client with a 6 months' notice. Maintenance stops at the end of the notice period and the maintenance fee will stop accordingly.

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## **4. SPECIFIC DEVELOPMENT**

### **4.1. APPLICATION**

Terms and conditions of this chapter are applicable only where flat fee specific development is to be carried out.

### **4.2. DEFINITION OF SPECIFIC DEVELOPMENTS**

Specific developments are defined as writing a complete customized application or amendments and/or additional developments in other software.

### **4.3. PRICING**

The price of the specific developments includes the costs of analysis and programming. Installation cost and training are not included in the price as well as any associated costs.

The costs of the analysis include the taking of data in the client's premises, the drafting of the analysis, the preparation of printings and the presentation of the analysis.

Programming costs include writing of programs, encoding programs, testing and the delivery of programs.

### **4.4. ORDER AND RATES**

Any development will have to be preceded by a purchase order containing the description of the development and the price. This document will be duly signed by the client.

### **4.5. OBLIGATION OF THE CLIENT**

The programs will be developed in strict accordance with the terms of the analysis that the client approves and for which he is responsible. It is therefore essential that the analysis is performed with the full cooperation of the client and that the client provides SDNA with all the necessary information which is as accurate as possible. The contractual obligation of SDNA is to be considered as an obligation of means.

### **4.6. SOURCE CODE**

The Source code of the development belongs to the Editor, namely SILICON DNA S.A. The Source code of software is never delivered to the client.

After delivery and installation of the development on the client system, the client becomes responsible for data integrity and backups. In the case of a specific development around standard software, the Editor reserves the right to use the source code to improve the standard version.

### **4.7. RECEPTION**

The validity of the programs is confirmed by the client together with SDNA as a result of comprehensive tests performed by the client within thirty days at the latest after delivery. In the absence of any written reserves made by the client indicating an anomaly based on extensive testing, the tests are considered satisfactory and further liability on SDNA is waived. In the absence of a written reserve, the programs will be considered as approved within thirty days of delivery.

### **4.8. WARRANTY**

Specific developments made by SDNA are guaranteed for a 3 months' period from their receipt. The guarantee consists of correcting errors and only applies after the following steps: the client



addresses to SDNA a written request for intervention justified by the detailed description of the error or observed errors and accompanied by a maximum of documentation (listing, print screen, etc.).

The warranty exclusively covers the programming and in no event any analysis problem. Are specifically excluded from the warranty: errors of the client personnel as well as any problems in relation with the equipment (hardware) or any other client third party software.

The guarantee is automatically cancelled by any change whatsoever, even minor, done by a user or third party in any of the elements of programming provided by SDNA, unless prior written agreement countersigned by both parties.

Warranty does not cover in any way the change of any specification given by the client during the analysis.

#### **4.9. RESPONSE TIME**

SDNA will respond to requests for support as far as possible on average within 1 to 3 working days from the receipt of the request depending on the urgency of the request and except in case of force majeure.

#### **4.10. ERROR MESSAGES**

If there is an error message displayed during any process in relation to any specific development and the client responds on its own to the message instead of calling SDNA, and if this answer leads to the interventions of SDNA, these interventions will in all cases be charged to the client at the rate in effect at the time of the intervention.

#### **4.11. LIMITATION OF RESPONSIBILITY**

After the warranty period, SDNA is exempt from any responsibility whatsoever, and cannot be asked for any compensation for special or consequential damages resulting from faulty work. Any intervention by SDNA will be done at the applicable billing rate in effect.

#### **4.12. NEW CHANGES**

For all new changes, the client must provide SDNA with a written detailed description of the request, supported by a maximum of documentation (e.g., listings, etc. ...)

SDNA will address to the client a detailed offer, specifying in particular the cost and time of the intervention.

This offer will be subject to the general terms and conditions.

The client will return to SDNA the signed offer which will be considered as the confirmation.

Upon receipt of this confirmation and subject to execution by the client of the conditions of the offer, SDNA will provide the services requested.

#### **4.13. BILLING CONDITIONS**

The billing terms are:

- 50% at the order.
- 50% at the delivery.

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## 5. SERVICES

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### 5.1. APPLICATION

Terms and conditions of this chapter are only applicable for services rendered billed on an as incurred basis.

### 5.2. DEFINITION

Every hour worked for a client, which is beyond the scope of benefits covered by the maintenance agreement of the software and by the warranty period of specific developments subject to any limitations thereto, and regardless of the type of intervention (installation, support, simple specific development, training, supervision, ...) and the scope (standard software, customizes development, systems installation, technical services, ...) is to be considered as a billable hour at the current rate in effect.

All jobs are carried out either on client's site or at SDNA's site.

The client can request that work be performed outside of normal office working hours (after 06:00 pm, weekends or holidays). In this case, the intervention will be charged at a rate of 200% of the rates in effect, plus travel expenses and accommodations.

At each end of the month, a report of total hours worked during the month will be sent to the client. All hours reported on the statement will be billed at the applicable rate.

### 5.3. OBLIGATION OF SDNA

As part of the services provided by SDNA, the client agrees to consider that it is virtually impossible in the computer industry to answer in all events to the client requests and specially to find a solution to any given problem. Under these conditions, the obligation of SDNA is to be considered as an obligation of means.

### 5.4. VISIT REPORT

Except in case of prior written consent, any job carried by SDNA personnel will result in a visit report indicating mileage, time of arrival and departure, purpose of visit and work performed.

### 5.5. PREMISES

The client agrees to make suitable premises available to SDNA. They will be equipped so as to generate no embarrassment or discomfort to the normal performance of SDNA's work.

Employees of SDNA who will have to work under this agreement in the client's premises will remain under the exclusive authority of SDNA regardless of the duration of these external services. However, SDNA staff will respect access and security procedures indicated by the client.

### 5.6. AUTHORITY OF THE CLIENT

The client is responsible for the instructions given by its staff to the SDNA staff. SDNA cannot validate the powers of those who are giving instructions for the client's account. The client will be validly bound by any member of its staff.

### 5.7. ACCESS TO COMPUTER SYSTEM

If the client uses a security system to restrict access to the computer system on which SDNA has to intervene, the client will have to waive the security to give access to employees of SDNA. If the employees of SDNA suffer loss of time related to the security system, they will be charged to the client at the rate in effect at the time of the intervention.

#### **5.8 CONDITIONS OF BILLING AND RATES**

Billing of work performed on an as incurred basis will be done by end of each month, based on the hours worked at the rates in effect during that period.

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## **5.9 DELEGATION OF PERSONNEL**

### **5.9.1. APPLICATION**

The general conditions of this subchapter are applicable only in the case of "staff delegation" missions.

### **5.9.2. DEFINITION OF THE MISSION**

The mission of SDNA includes specific assistance to the client for a project designed by him in which SDNA assigns one or more of its employees to carry out the mission.

### **5.9.3. DURATION**

Each assignment is accepted for a definite duration. It automatically ends at the foreseen date.

### **5.9.4. EXTENDED MISSION**

No later than two-thirds (2/3) into the mission, the client may request SDNA to extend the mission. In the absence of such a request, SDNA cannot guarantee the availability of its personnel till the end of the mission.

### **5.9.5. CHANGE OF PERSONNEL**

If both parties so desire or deem necessary, they may, by mutual agreement, temporarily or permanently, assign other person(s) for the rest of the mission.

### **5.9.6. RESPONSIBILITY OF THE PROJECT**

SDNA will execute its mission in the best possible way in line with the indications and directives received from the client. Since under the present agreement, SDNA only provides assistance, responsibility for the project remains with the client.

### **5.9.7. EARLY TERMINATION**

The mission will end prematurely if SDNA staff cannot continue the mission personally due to illness, breach of contract, or force majeure or similar causes and if no replacement takes place according to the stipulations listed in the article "Change of Personnel".