



ENGINEERING SUPPORT TERMS

These terms of service apply to Customers who purchase Engineering Support from 2iC (**Engineering Support Terms**).

For the purposes of these Engineering Support Terms, You are the customer stated in the Order Form (**Customer** or **You**); and **We, Us** or **2iC** is 2iC Limited of 2 Venture Road, Southampton Science Park, Chilworth, Southampton, England, SO16 7NP. Together, You and 2iC are the **Parties** and each are a **Party**.

BACKGROUND

- (A) 2iC has supplied and licensed certain software products to You under the terms of the Licence and has agreed to provide support for such software under the terms of the TOOLKIT Subscription Terms.
- (B) Where further or specific support is required by the Customer, which exceeds the Services provided by 2iC under the TOOLKIT Subscription Terms, the Customer may purchase Engineering Support from 2iC on these Engineering Support Terms.

AGREED TERMS

The definitions which apply to these Engineering Support Terms are stated in Appendix 1.

1 Supply of Engineering Support

- 1.1 Access to Engineering Support is conditional upon the Customer maintaining an active TOOLKIT Subscription. 2iC shall have no obligation to provide Engineering Support unless the Customer holds a valid TOOLKIT Subscription.
- 1.2 In consideration of payment by the Customer of the Engineering Support Charges and the Customer agreeing to abide by the terms of these Engineering Support Terms, 2iC shall supply the Engineering Support to the Customer in accordance with these Engineering Support Terms.
- 1.3 In supplying the Engineering Support, 2iC shall:
 - a) perform the Engineering Support with reasonable care and skill in accordance with Good Industry Practice;
 - b) comply with all applicable laws; and
 - c) use reasonable endeavours to ensure its staff observe all reasonable health and safety and security requirements that apply at any of the Customer's premises they access, if any, and have been communicated to 2iC in advance in writing. 2iC shall not be liable if, as a result of observing these requirements, it is in breach of any of its obligations under these Engineering Support Terms.
- 1.4 When the Customer wishes to procure Engineering Support from 2iC, the Customer shall place an Order Form with 2iC which states the Customer's wish to either:
 - a) agree with 2iC the work to be performed and the timescales for performing the work under a separate statement of work, and for 2iC to proceed with the work on either an hourly-rate basis or a set fee as agreed; or
 - b) purchase Engineering Support in blocks of five (5) days or more. A day consists of 8 working hours. All purchased days must be consumed within the period of the TOOLKIT Subscription. Unused days expire automatically at the end of that period and are non-refundable, non-creditable, and non-transferable.
- 1.5 2iC shall be under no obligation to accept any request for Engineering Support and may choose not to accept the Order Form in its sole discretion, acting reasonably.



- 1.6 The Customer may draw-down from the time ordered under clause 1.4b) by raising a support ticket via the Support Portal.
- 1.7 A member of 2iC's Support Staff will assess the ticket to determine the urgency and nature of the work required.
- 1.8 2iC shall record the time taken to respond to the ticket (within the ticket), rounded up to the nearest 0.25 hours.
- 1.9 The Customer hereby authorises 2iC to spend up to 2 hours working on each ticket raised by an Authorised User.
- 1.10 As soon as 2iC determines that a ticket is likely to require more than 2 hours' work to resolve, 2iC will:
- a) pause work;
 - b) estimate the duration of work required and its associated cost; and
 - c) seek authority from the Customer to proceed. 2iC shall be under no obligation to provide further Engineering Support until such authority has been expressly provided by the Customer.
- 1.11 The estimated duration and authority to proceed will be recorded within the ticket.
- 1.12 If it appears likely to 2iC that the estimated duration will be exceeded at any time, 2iC shall repeat the process set out in clause 1.10.
- 1.13 At the Customer's reasonable request, there will be a call between 2iC and the Customer to review tickets, activity and time spent and discuss any outstanding issues on a monthly basis.
- 1.14 If, during the performance of the Engineering Support, 2iC receives written notice from the Customer of any breach by 2iC of its obligations contained in clause 1.3, 2iC shall, at its own option and expense, either:
- a) subject to clauses 2.2 and 12.2, remedy that breach within 30 days following receipt of such notice; or
 - b) terminate these Engineering Support Terms immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to 2iC under these Engineering Support Terms during the applicable period in which the termination occurs, less a charge for the Engineering Support performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable 2iC to comply with its obligations under this clause.
- 1.15 This clause sets out the Customer's sole and exclusive remedy and 2iC's entire liability for breach of its obligations contained in clause 1.3.

2 CUSTOMER'S OBLIGATIONS

- 2.1 The Customer shall:
- a) co-operate with 2iC in all matters relating to the Engineering Support; and
 - b) provide 2iC, in a timely manner, with all information and materials as 2iC may reasonably require to provide the Engineering Support and ensure that they are accurate and complete in all material respects; and
 - c) nominate a Manager to be available to liaise with and respond to queries from the 2iC designated point of contact.
- 2.2 To the extent that 2iC's performance of its obligations is prevented or delayed by any act or omission of the Customer or any of the Customer's Authorised Agents (**Excusing Cause**), 2iC shall not be in breach of its obligations nor liable for any losses incurred by the Customer as a result of its performance being prevented or delayed. Without prejudice to any other right or remedy it may have, 2iC shall be:



- a) allowed an extension of time to perform its obligations equal to the delay caused by the Excusing Cause;
- b) entitled to payment of the Engineering Support Charges despite its performance being prevented or delayed; and
- c) entitled to recover any losses, including additional costs, incurred as a result of the Excusing Cause.

2.3 The Customer shall provide 2iC, the Support Staff and all other persons duly authorised by 2iC with full, safe and uninterrupted remote access to the Customer's systems, and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours.

2.4 Where the Services are to be performed at any of the Customer's premises, the Customer 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. Where remote access is required by 2iC, the Customer shall facilitate such remote access by promptly installing and running any remote access tools reasonably required and provided by 2iC.

3 ENGINEERING SUPPORT CHARGES

3.1 The Engineering Support Charges shall be set out in the Order Form or statement of work (as applicable).

3.2 If the Customer fails to make any payment due to 2iC under these Engineering Support Terms by the due date for payment, then, without limiting 2iC's remedies, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

3.3 If on-site support is required it may be provided by 2iC at its option, with agreement from the Customer and charged for (including but not limited to travel time and subsistence costs) at the rates set out in the Order Form.

3.4 All amounts due under these Engineering Support Terms shall be paid by the Customer to 2iC in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4 INVOICING

4.1 2iC will invoice you for the Engineering Support Charges either:

- a) in accordance with the terms of the appropriate Statement of Work; or
- b) in advance, for purchase days of time to be spent performing Engineering Support, upon receipt of an Order Form from the Customer; or
- c) if agreed and recorded in the Order Form and subject to acceptable credit rating, 2iC may charge for time used monthly in arrears against a valid Order Form from the Customer.

5 INTELLECTUAL PROPERTY RIGHTS

5.1 All Intellectual Property Rights in the Deliverables:

- a) which relate to the COTS Software shall belong to 2iC and you shall have no rights in respect of any of the Deliverables except as expressly granted under these Engineering Support Terms;
- b) which relate specifically to the Customer's product, shall belong to the Customer and upon receipt of the Engineering Support Charges which apply to such Deliverable, 2iC hereby assigns the newly created Intellectual Property Rights in such Deliverable to the Customer.



- 5.2 2iC undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables (or any part of them) infringes the UK copyright of a third party (**Infringement Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.
- 5.3 Clause 5.2 is conditional on:
- a) the Customer notifying 2iC in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
 - b) the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of 2iC, such consent shall not be unreasonably withheld or delayed; and
 - c) 2iC having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving 2iC all reasonable assistance in connection with those negotiations and such litigation at 2iC's request and expense.
- 5.4 If any Infringement Claim is made, or in 2iC's reasonable opinion is likely to be made, against the Customer, 2iC may at its sole option and expense:
- a) procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of these Engineering Support Terms; or
 - b) modify the Deliverables so that they cease to be infringing; or
 - c) replace the Deliverables with non-infringing works; or
 - d) terminate the specific element of the Order Form or statement of work under which the Engineering Support or Infringing Deliverable is undertaken immediately on written notice to the Customer and repay to the Customer any sums which the Customer has paid to 2iC under such Order Form or statement of work, less a charge for the Engineering Support performed up to the date of termination and any Deliverables under such Order Form or statement of work which are not deemed to be infringing. For the avoidance of doubt, unless otherwise agreed by the Parties, the remainder of such Order Form or statement of work (as applicable) shall continue in full force and effect.

6 NON-SOLICITATION

- 6.1 The Customer shall not, for the duration of the Engineering Support and for a period of 12 months following termination or expiry of these Engineering Support Terms, directly or indirectly induce or attempt to induce any employee of 2iC who has been engaged in the provision, receipt, review or management of the Engineering Support to leave the employment of 2iC.

7 TERMINATION

- 7.1 Each Party shall have the right, without prejudice to its other rights or remedies, to terminate these Engineering Support Terms immediately by written notice to the other Party if the other Party is:
- (a) in material or persistent breach of any of its obligations under these Engineering Support Terms and either that breach is incapable of remedy, or that Party has failed to remedy that breach within 30 days after receiving written notice requiring it to do so; or
 - (b) unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its



creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

- 7.2 2iC shall have the right, without prejudice to its other rights or remedies, to terminate these Engineering Support Terms immediately by written notice to the Customer if the Customer fails to pay the Engineering Support Charges or any other sum when due, or if the Customer disputes the ownership or validity of 2iC's Intellectual Property Rights.

8. CONSEQUENCES OF TERMINATION

- 8.1 On expiry or termination of these Engineering Support Terms for any reason:
- a) the Customer's right to receive the Engineering Support shall cease automatically;
 - b) each Party shall immediately return to the other Party all property and materials containing confidential information belonging to such Party; and
 - c) all amounts due from the Customer to 2iC under these Engineering Support Terms shall be paid immediately.

- 8.2 Any termination of this Engineering Support Terms (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of these Engineering Support Terms which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

9. LIMITATION OF LIABILITY

- 9.1 The restrictions on liability in this clause **Error! Reference source not found.** apply to every liability arising under or in connection with these Engineering Support Terms including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in these Engineering Support Terms limits or excludes liability:

- a) for deliberate or wilful default;
- b) for death or personal injury caused by negligence;
- c) for fraud or fraudulent misrepresentation;
- d) for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
- e) that cannot legally be limited;
- f) for the Customer's liability for its payment obligations under these Engineering Support Terms.

- 9.3 Subject to **Error! Bookmark not defined.****Error! Reference source not found.**, neither Party shall have any liability for:

- a) loss of profits (including loss of anticipated savings);
- b) loss of business or business opportunity;
- c) loss of use or corruption of software, data or information;
- d) loss of or damage to goodwill; or
- e) special, indirect or consequential loss, costs, damages, charges or expenses.

- 1.4 Subject to **Error! Bookmark not defined.****Error! Reference source not found.** and 3, each Party's total aggregate liability to the other Party in respect of a claim arising from a breach of these Engineering Support Terms (including clause **Error! Reference source not found.**) shall not exceed the value of the Engineering Support Charges paid or payable to 2iC under the Order Form or statement of work under which the liability arises.

10. DISPUTE RESOLUTION



- 10.1 If any disagreement or difference of opinion arises out of this agreement, the Manager and the 2iC designated point of contact shall meet (in person or by suitable alternative means, e.g. a telephone call) to attempt resolution. Should they not meet within 14 days of either party attempting to convene a meeting with the other to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting, then the matter shall promptly be referred by either party to senior management of each party for immediate resolution.
- 10.2 If, within 14 days of the matter first having been referred to the respective Parties' senior representatives pursuant to clause 10.1 above, no agreement has been reached as to the matter in dispute, the dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute and each party shall be free to pursue the rights granted to it by these Engineering Support Terms in respect of such matter without further reference to the dispute resolution process.
- 10.3 For the avoidance of doubt, clauses 10.1 and 10.2 shall not prevent either Party from seeking injunctive relief in the case of any breach or threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of a third party's Intellectual Property Rights.

11 COMMUNICATIONS BETWEEN US

- 11.1 If 2iC has to contact the Customer, 2iC will do so via email using the address provided on the Order Form (or such other email address notified by the Customer in writing from time to time).
- 11.2 Any notice given under these Engineering Support Terms by either Party to the other must be in writing and may be delivered by email and will be deemed to have been given upon production of a valid delivery receipt notice to the correct email address.
- 11.3 Notices will be delivered or sent to the email addresses of the Parties on the Order Form or to any other email address notified in writing by either Party to the other for the purpose of receiving notices after the date of these Engineering Support Terms.

12 FORCE MAJEURE

- 12.1 2iC will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under these Engineering Support Terms that is caused by a Force Majeure Event.
- 12.2 If a Force Majeure Event takes place that affects the performance of 2iC's obligations under these Engineering Support Terms:
- a) its obligations under these Engineering Support Terms will be suspended and the time for performance of our obligations will be extended for the duration of the Force Majeure Event; and
 - b) 2iC will use its reasonable endeavours to find a solution by which its obligations under these Engineering Support Terms may be performed despite the Force Majeure Event; and
 - c) if the period of delay or non-performance continues for a continuous period of more than 60 days, either Party may terminate these Engineering Support Terms immediately by written notice to the other Party.

13 ACCEPTANCE

- 13.1 The Customer shall be deemed to have accepted of these Engineering Support Terms (and accordingly unequivocally agrees to be bound by these terms) on the earlier occurrence of:
- a) the Commencement date;
 - b) the Customer entering into a separate statement of work for 2iC to proceed with the work on either an hourly-rate basis or a set fee as agreed; or
 - c) the Customer having issued a purchase order for 5 or more days of 2iC's working time.

14 CONFIDENTIALITY



- 14.1 Each Party shall keep confidential all information of the other Party that is marked as confidential or that ought reasonably to be treated as confidential. This includes information relating to the COTS Software, business operations, security arrangements and any data provided under the controlled support process.
- 14.2 2iC does not ordinarily access or host any Customer data and will treat any data that the Customer chooses to provide, upload or process through GitHub, Atlassian or another agreed platform as confidential.
- 14.3 Unless otherwise agreed between the Parties, each Party shall use the other Party's confidential information only for the purposes of these Engineering Support Terms and shall not disclose it to any third party except:
- a) to the extent necessary to its Authorised Users, its personnel or sub-processors who need to know for the purpose of complying with their obligations under these Engineering Support Terms and who are bound by confidentiality obligations; or
 - b) to the extent required to be disclosed by law, or any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.
- 14.4 The obligations under this clause do not apply to information that is already public, that becomes public through no fault of the receiving Party, that is independently developed or that the receiving party is required to disclose in accordance with clause 12.3.
- 14.5 Each Party shall protect the other Party's confidential information with the same degree of care that it uses to protect its own confidential information of a similar nature.
- 15 OTHER IMPORTANT TERMS**
- 15.1 Nothing in these Engineering Support Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party as the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 15.2 If any provision or part-provision of these Engineering Support Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Engineering Support Terms. If any provision of part-provision of these Engineering Support Terms is deemed deleted under this clause, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.3 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 15.4 No variation of these Engineering Support Terms, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties (or their authorised representatives).
- 15.5 Unless expressly stated otherwise, a person who is not a party to these Engineering Support Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit under or to enforce any term of these Engineering Support Terms.
- 15.6 2iC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under these Engineering Support Terms.
- 15.7 The Customer shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of your rights, obligations, benefits or interests arising under these Engineering Support Terms without the prior written consent of 2iC.
- 15.8 These Engineering Support Terms and any documents annexed to it or referred to in them or expressly referred to it them, constitute the entire agreement between the Parties in respect



of the supply of Engineering Support and supersedes and extinguishes all previous and contemporaneous agreements, arrangements and understandings between the Parties relating to that subject matter.

- 15.9 The Customer acknowledges that in entering into these Engineering Support Terms The Customer do not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Engineering Support Terms or any document expressly referred to in it.
- 15.10 Each of the conditions of these Engineering Support Terms operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 15.11 These Engineering Support Terms, their subject matter and their formation (and any non-contractual disputes or claims) are governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

Appendix 1 – Definitions

1. DEFINITIONS AND INTERPRETATION

The following definitions apply in these Engineering Support Terms:

Affiliate	each and any indirect and direct subsidiary, group or holding company of that party and each and any subsidiary of a holding company of that party.
Authorised Agent	each and any agent, employee, contractor or subcontractor of the Customer, or any Affiliate who is engaged or employed by the Customer or any Affiliate to provide services.
Authorised User	an employee, agent or independent contractor of the Customer or its Affiliate, who is authorised by the Customer to access and use the TOOLKIT.
Business Day	a day, other than a Saturday, Sunday or public holiday in England.
Commencement Date	As stated in the Order Form or applicable statement of work.
COTS Software	The 2iC COTS computer software listed in the Order Form.
Data	As defined in the Licence
Deliverables	any documentation, software, know-how or other works supplied by 2iC (whether alone or jointly) in the course of providing the Engineering Support.
Engineering Support	the support services to be provided by 2iC, pursuant to these Engineering Support Terms, as may be stated in the applicable Order Form or statement of work.
Engineering Support Charges	as stated in the Order Form or applicable statement of work.
Force Majeure Event	means any circumstance not within a party's reasonable control including: a) acts of God, flood, storm, drought, earthquake or other natural disaster; b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; c) nuclear, chemical or biological contamination or sonic boom; d) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; e) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; f) any labour or trade dispute, strikes, industrial action or lockouts; and g) interruption or failure of utility service.



Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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 protection which subsist or will subsist now or in the future in any part of the world.
Licence	the end user licence agreement for COTS Software under which 2iC licenses the COTS Software to the Customer.
Manager	the person appointed by the Customer from time to time in order to fulfil the role described in clause 3.5 of the TOOLKIT Subscription Terms.
Order Form	the commercial document that sets out the specific products or services being purchased together with the applicable fees, quantities, terms, and any agreed variations. It acts as the formal record of the commercial agreement between you and us or, where relevant, between you and our authorised reseller. An order form may take the shape of a 2iC order form pro forma, a quotation document, a purchase order, or any other document that captures the agreed commercial terms.
Support Portal	the 2iC portal through which support requests are raised and logged and which is accessed at support.2icworld.com
Support Staff	those officers, employees, workers, agents or subcontractors of 2iC connected with the TOOLKIT, including those individuals who perform 2iC's obligations under the TOOLKIT Subscription Terms.
TOOLKIT Subscription Terms	the terms under which 2iC provides TOOLKIT to the Customer.
TOOLKIT	the subscription services provided by 2iC to the Customer via the online portal at https://2icltd.atlassian.net/wiki/spaces/DC/overview or any other website notified to the Customer by 2iC from time to time.