



SurfRay 2009 A/S  
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## SurfRay 2009 A/S – Standard terms of business

### 1. APPLICATION

The standard terms of business apply to any sale of SurfRay 2009 A/S' (hereafter called the "Supplier") services and products to customers of Supplier including delivery of related products and services such as hosting, service and support, maintenance of software and IT systems, consultancy and licensed to software, unless they explicitly have been departed from or modified by alternative written agreement and it by certainty can be established that the intention was to depart from present terms.

### 2. DEFINITIONS

In these standard terms of business and other agreement originating from Supplier, the following definitions apply:

- "The agreement": The specific agreement between Customer and Supplier concerning delivery of services from Supplier.
- "Business day": Monday to Friday except from holidays, Christmas Eve, New Year's eve and Constitution Day.
- "Supplier's normal working hours": Supplier's normal working hours are business days from 09.00 to 16.00 (Danish time).
- "Customer": By this means the party of the agreement with Supplier in accordance with the specific agreement.
- "Solution": The IT system, software etc., of which the agreement is about.

### 3. LICENCE

Item 3 and possible sub items are valid for agreements between Customer and Supplier which include licence to use of Solution and the included software.

By services including software, changes to software, updating and/or maintenance of software or other material, the Customers acquires a non exclusive and non transferable right of use to the delivered, conditional on the Customer's payment of the agreed fee. The right to use is

limited to the Customer's own commercial use. Furthermore, the right to use is conditional on the Customer's having an agreement with Supplier about support- and maintenance. Should the Customer or any third party make changes or intervene to the Solution or other services of the Supplier, including software, all of Supplier's obligations become void without further notice, including any guarantee obligations. Supplier disclaims any responsibility for such changes or interventions.

The Customer has no right to pass on or resell, lease, lend or in any other way distribute the right to use to third party. The Customer does not acquire the right to tools, techniques or other which have been used to produce the Solution or other services, which are included in this, as all rights remain with Supplier or with possible third party.

Supplier guarantees that the Solution does not violate third party's rights. If legal proceedings are taken against the Customer where a claim is sustained that the Solution or other of the Supplier's services violate the rights of third party, The Customer is liable to inform Supplier promptly hereof, as the Supplier will take over the claim and the hereby connected expenses. The Supplier has in this connection irrevocable authority at his own expense to carry through legal action and/or accept a compromise. Should Supplier lose such a case of violation to third party, the Supplier will at his own choice provide the Customer the rights to continued use of the Solution or bring the violation to a conclusion by changing or replacing the Solution with an other service which essentially has equal functionality as the Solution. Alternatively the Supplier can terminate the contract with immediate effect and return the payment of the Customer. In that case the Customer cannot assert any claims against The Supplier.

### 4. HOSTING

Item 4 and possible sub items are valid for agreements between Customer and Supplier which include hosting services.

The Supplier handles hosting and driver Solution as well as the related software, hardware and data

communication connections in preparation to make the Solution available to the Customer by a standard access to the internet. Delivery of the Solution is considered done when the Solution is made available for the Customer as stated in Appendix 1.

It is a precondition that in order to deliver the Solution, the Customer's own IT system can comply with the specified technical specifications and demands of the system. The Customer alone is responsible for the system being able to comply with these demands. Agreements including hosting services are sold and delivered exclusively combined with a support contract.

It is likewise a precondition for delivery of the hosting service that the Customer at the time in question has required 3. party licences to the software which is included in the Solution.

The Supplier makes routine back up of his server from which the Solution is hosted. The Supplier is not liable to any loss or damage of the Customer or third party may suffer because of lack of back up cf. item 13 and 14.

#### 4.1. Requirements to the Solution

The Solution has the features which may be expected from a professionally hosted IT installation of as the Solution. The Supplier endeavours to make the Solution available for the Customer for minimum 95 % of the time a year. ("Availability"). The Solution alone is considered inaccessible to the Customer if a material condition exist cf. item 5.4.

If it is recorded that the Availability measured over a month period of time, is not maintained and this is due to the Supplier's affairs for three months in a row the Customer is entitled to in writing to terminate the Agreement at reduced notice of one month. Irrespective of this first year of fees are not refundable.

### 5. SUPPORT

Item 5 and possible sub items are valid for agreements between Customer and Supplier which include support services

#### 5.1. Scope of support services

Supplier will provide support in relation to The Solution. "Support" means any form of offsite guidance and includes:

- Use of existing standard functionality in the Solution, including support to use and administration of the Solution. Standard functionality means functionality described in the enclosed standard documentation of the Solution cf. Appendix 1.
- Remedy of fault when it concerns faults in the Solution by way of lacking functionality in relation to the description of the standard documentation enclosed the Solution.
- Guidance to restoration at operation breakdown of the Solution provided that

the breakdown is caused by fault in the Solution.

- Support to first standard installation of the delivered components in connection with the set up, which are to be installed at the Customer. Standard installation means the installation procedure which is described in the standard documentation of the Solution.

Support does not include:

- Projects of development, which means increase of the functionality in relation to the existing Solution, development of functionality and recoding of or changes to complete functioning functionality.
- Remedy of faults when faults are not caused by defect in the product.
- Support to use, installation of components which are not supplied by the Supplier.
- The support of the Supplier in relation to parts of the Solution which are specially adjusted to the Customer.
- Assistance to others than the Customer or the Customer's use of the Solution.
- Assistance in situations which only the Customer is responsible.

#### 5.2. Supply of the support service

The Supplier supply support within the Supplier's normal working hours. The Supplier determines how the support is most efficiently supplied. All communication with the Supplier's support department will be in English. Support consists of following facilities open to the Customer depending on the chosen contract of support:

- Standard support, which gives the right to send in support questions in Suppliers online support system on [www.surfray.com](http://www.surfray.com), response from Supplier, subsequently communication by e-mail and access to the Supplier's online knowledge database and support documentation.
- Support by telephone is an additional service to the Standard support which gives access to contact by telephone to the Suppliers support department.
- Remote support is an additional service to the Standard support, which gives access to the Supplier's support department who if necessary may enter the Customer's systems electronic by a secure internet connection and through this support directly with installation and configuration in connection with support.

#### 5.3. Request for support

Customer's request for support is on all occasions done by the Customer sending a request for support in Suppliers online support system on [www.surfray.com](http://www.surfray.com). Provided that the Customer has signed a Support contract which includes support by telephone, it is subsequently possible to contact the Supplier by telephone for follow-up.

Subject to which support is requested, is categorised by the parties jointly in connection with the Customer's request cf. item 6. Should disagreement on the categorisation occur, the Supplier has the final decision on the matter. In connection with request for support the Customer must describe the problems referred to in a report of problem which at a minimum must include following information:

- Name of Solution
- Number of version
- Time of finding the fault/defect
- Who has found the fault/defect
- Description of the fault/defect including action made and achieved reaction
- Suggestions to categorising of fault/defect ("Important" or "Other")
- Possible appendix to clear up the case (e.g. screen print)

#### 5.4. Time of response for support

Time of response of the Supplier is for "Important situations" eight hours within the normal working hours of the Supplier. For "Other situations" it is 72 hours within the normal working hours of the Supplier. By "Important situations" means situations where the Solution (the functionality) is out of order and none of the Customer's users are able to use the Solution, and reasonably evasion is not possible including a temporarily evasion of the problem is not possible on the condition that the situation is critical for solution of the Customer's work.

Measuring the time of response is counted from the time of the Supplier's having registered the inquiry in the Supplier's support function cf. item 5.3 and received the Customer's adequate information on the situation to which support is requested, until the time where the Supplier has started the support. This is only done within the Supplier's normal working hours. Should the Customer misuse the support service including by repeatedly reporting important situation which are not to be regarded as important situations, the Supplier is entitled to charge the Customer for time used on support in accordance with the Supplier's stipulations and hourly rates for consultant at the time in question.

Should the Customer request a guarantee of shorter times of response than the above and/or above normal working hours and/or written documentation before, during and after the period of repairs/corrections, this can be obtained by a stand-by contract with the Supplier.

## 6. MAINTENANCE

Item 6 and possible sub items are valid for agreements between Customer and Supplier which include upgrades and maintenance of the Solution.

The Supplier is continually developing new versions, releases and patches of the Solution which as soon as and to the extent that they are released or when the Supplier finds it required can be accessible to the Customer. Version means

wider updates of the Solution which may be characteristic of new functionality and by changes to the number of version from e.g. 5.0 to 6.0 (contrary to a new release). Release means a minor update of the Solution including new functionality and corrections of defaults, which may be characteristic of changes to the number of version by a decimal e.g. from 5.0 to 5.1. A patch means minor updates which often are correction of defaults which may be characteristic of changes to the number's second decimal e.g. from 5.00 to 5.01. On his web site the Supplier informs currently of new versions, releases and patches including essential changes compared to previous versions/releases when such are available. The Customer may subscribe to standard maintenance contract maintenance:

- Standard maintenance gives the right to all releases and patches free of charge.

New versions are not included in the maintenance service and are priced separately.

With a hosted Solution the Supplier is always entitled without prior notice to shut down the Customer's access to the Solution for a short period of time in order to implement critical updates of the Solution including but not limited to security updates. A shut down does not imply that possible arranged availability of the Solution is considered decreased. The Supplier has no obligations of updating and/or maintenance in relation to possible special adjustments of the Solution or parts hereof which are made especially for the Customer.

Access to maintenance services demands that the Customers is current with any payments to the Supplier and are correctly licensed relative to the actual usage of products and services.

## 7. CONSULTANT ASSISTANCE

Item 7 and possible sub items are valid for agreements between Customer and Supplier which include updates and maintenance of standard software products.

For consultant services apply that the Supplier is not committed to provide a defined result but to the best of his abilities and according to present level in the business endeavour to solve the tasks given by the customer. Delivery is considered done when Supplier has spent time in connection with the service.

The Supplier supplies Remote consultant assistance in accordance with separate agreement. Remote consultant assistance is an additional service to the Standard support which gives access to consultant assistance through Remote support which is not included in the Standard support.

## 8. THE CUSTOMER'S PART

The Customer is responsible for update of third party's software, if the Supplier finds it necessary in order to fulfil the obligations of the Agreement.

Expenses in connection to this are of no concern to the Supplier. Should the Customer require assistance with third parties software which the Supplier supports, it is possible to buy Remote consultant assistance. The Customer must when contacting the Supplier give any relevant information on the Solution. To ensure the best possible support the Supplier may ask the Customer to send an additional written request for support. The Customer is obliged if requested by the Supplier, to loyally participate in the process of carrying out and testing the services of the Supplier.

## **9. LAW REGULATING ACCESS TO PERSONAL DATA INFORMATION**

If relevant the Customer is liable to comply with the law regulating access to personal data information to which the Supplier cannot be held liable.

## **10. PRICES AND PAYMENT**

If the Customer chose additional services to the Solution during the term of the contract, regulation of the monthly payment will apply retrospectively from the date the additional services are put into service.

It is the responsibility of the Customer in time and prior to settlement, to ensure that The Supplier has all relevant and necessary information which is required supplied on invoices and is of importance to payment in time.

Hosting and support fees may increase in accordance with the percentage increase given by Danmarks Statistik published net consumer-price index cf. consolidated act no. 76 of 3. February 1999

Adjustment of payment is made yearly on 1 January based on the net consumer-price index on 1 January prior to entering agreement. The agreement is automatically renewed with a period of 12 months unless the Customer has cancelled in writing with a two months notice prior to expiry date. All prices are exclusive VAT. Any public tax and/or duty including VAT which are imposed the services of the Supplier is paid by the Customer.

The Supplier may in addition to the agreed payment charge refund for expenses paid in connection with delivery of the Solution including expenses to third party software, transportation, accommodation, provisioning, communications etc. However this refund requires a preceding written acceptance from the Customer. Time of payment is determined in the Agreement. Terms of payment are net cash 14 days from date of invoice to the directed place of payment of the Supplier. Payment is to be made cost free for the Supplier. When payment is overdue the Customer will pay 1.5% interest as at the beginning of the month of the overdue balance until payment is made. The Customer cannot effect a set-off in the payment of the Solution originating from declared claim of other legal matters. Where the Customer fails to make payment in due time and/or fails to pay after having received reminders and continuously has a substantiated outstanding, irrespective of

reason and amount, the Supplier reserve the right to turn down any further delivery until all outstanding have been settled without any effect on the Customer's liability to pay. When performing consultant services the Supplier's fee is charged on the basis of the time used on the service in accordance with the hourly rate of the Supplier. The Supplier charges full rate per hour during transportation.

## **11. COMPLAINTS AND BREACH**

If the Customer finds defects the Customer must immediately and no later than 30 days after having found the defect, make a written complain to the Supplier with a specification of the defects which are maintained. If complaint is not maintained in due time, the complaint becomes void.

If a defect exists Supplier can chose with consideration to the most suitable for the Customer whether the situation requires remedy, replacement delivery or proportional reduction. Beyond this the Customer cannot sustain any complaints.

In the absence of other information in these conditions or in a written separate agreement, the Customer cannot exercise the right to claim breach according to Danish law's common rules. The Customer may exclusively terminate the Agreement if the Customer in writing files a claim to the Supplier with a description of the breach and express the claim to be considered as right to termination and the Supplier has not made any deliveries within 30 days from receipt of the claim. It is considered a considerable breach if the Customer has failed to pay due amounts no later than 30 days after date of payment and/or if it is found that the Customer is insolvent, suspends payment, is in liquidation proceedings or the like.

## **12. PRODUCT LIABILITY**

The Supplier is solely responsible for product liability in accordance with the rules of the law of product liability which cannot be departed from by agreement. The Supplier is not liable to damages to products on any basis. If it becomes known to the Customer that a damage has occurred or that there is reasonable risk of such as a consequence of the Supplier's service, the Customer must immediately inform the Supplier hereof.

## **13. COMPENSATION**

Irrespective of the grounds on which a claim is made and irrespective of the extend of negligence, the Supplier not liable for any indirect loss or consequential damages including but not limited at operating loss, loss of profits, loss of data or expenses to re-establishment hereof.

The Customer cannot under any circumstances claim compensation and/or proportionately reduction from the Supplier which in total exceed the total payment made by the Customer for the Solution on which the claim is based. This maximum is valid as a total accumulated maximum for all affairs which during the time of

the Agreement may justify the Customer to compensation and/or proportionately reduction from the Supplier irrespective of the degree of negligence and irrespective of any breach on guarantee.

#### **14. FORCE MAJEURE**

The Supplier is not liable to the Customer in case of force majeure and the parties' liabilities in accordance with the agreement, is suspended until the force majeure incident has stopped as the parties are free to terminate the Agreement wholly or partly if the force majeure incident has not stopped 60 working days after one party has claimed it.

Force majeure means conditions which are out of the parties' control, and which the parties when entering the Agreement should have taken into consideration including but not limited to war, rebellion and disturbances, act of terrorism, catastrophe of nature, strike and lock outs, scarcity of goods, lacks and delays at deliveries from the Supplier' sub-suppliers, fire, deaths, illness or resigning of key figures and computer viruses.

Force majeure can at most be maintained for the amount of days the force majeure incident lasts..

#### **15. SECRECY**

Supplier and Customer must comply with secrecy concerning confidential relationship to each other. This obligation is also valid beyond termination of this Agreement.

Supplier may use the Customer as reference.

#### **16. DISPUTES**

Any dispute between the Supplier and the Customer will be settled in accordance with Danish law.

Any disputes should as far as possible be settled between the parties amicably. If a dispute cannot be solved amicably The Maritime and Commercial Court in Copenhagen shall be venue.