

OAKFIELD SOFTWARE LIMITED

VISUAL PLANNING SUPPLY TERMS

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See the following at <https://oakfieldsoftware.co.uk/legal>

SCHEDULE ONE - VP PLANNING SUPPORT AND MAINTENANCE – STILOG..... SEE WEB SITE

SCHEDULE TWO– VP EULA – STILOG

SEE WEB SITE

SCHEDULE THREE – VP SAAS – STILOG..... SEE WEB SITE

1 INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions.

Configuration Specification: configuration of the Software necessary to deliver the intended use of the Software by the Customer and as agreed by the Supplier;

Contract: the terms of this agreement;

Customer Proposal: The proposal issued by the Supplier to the Customer detailing the services to be provided by the Supplier (including costs) and containing the Configuration Specification;

Documentation: the online manuals for Software as amended from time to time under support services and/or Training;

End User: a person authorised by Stilog I.S.T to use the Software for the purposes of the Customer's business;

EULA: The Software End User Licence Agreement set out in Schedule 2 or any other version supplied by Stilog I.S.T or online at <https://oakfieldsoftware.co.uk/legal/> ;

Functional Support: the support services to be provided by the Supplier as specified in the Customer Proposal;

Hardware Specification: the Supplier recommended hardware specification;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Installation: for on premises licences the preparation and build of the server and loading of the Software onto the Customer's server or for cloud the preparation and build of the server and loading of the Software onto the Stilog server;

Licensed Materials: the Software and Documentation;

Maintenance Fees: the fees specified in the Customer Proposal;

SaaS Agreement: the agreement set out in Schedule 3 of this Agreement or any other version supplied by Stilog I.S.T or online at <https://oakfieldsoftware.co.uk/legal/>;

Services: the services to be provided by the Supplier under the Contract and as described in the Customer Proposal;

Site: the Customer's premises or any other location specified by the Customer at which the Services are to be provided;

Software: software as defined in the Software Licence;

Software Licence: is the EULA;

STILOG I.S.T is the Software editor;

Support Agreements: includes both the SaaS Agreement and the Support and Maintenance Agreement;

Support and Maintenance Agreement: the Stilog I.S.T agreement attached as part of Schedule 1 or any other version supplied by Stilog I.S.T or online at <https://oakfieldsoftware.co.uk/legal/>

Technical Support: the support provided under the Support Agreements;

Training: the training provided by the Supplier as set out in the Customer Proposal;

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9 If any conflict arises between the terms and conditions of this agreement and any provision of any schedule, the terms and conditions of schedules shall prevail. If any conflict arises between this agreement and the Software Licence and/or the Support and Maintenance Agreement, the terms of the Software Licence shall prevail and the terms of this agreement shall prevail over the terms of the Support and Maintenance Agreement.

2 APPLICATION OF CONDITIONS

- 2.1 These conditions shall:
 - a. apply to and be incorporated in the Contract; and
 - b. prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3 EFFECT OF PURCHASE ORDER

- 3.1 The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or signature by the Customer of these conditions or the Supplier's commencement or execution of work pursuant to the purchase order (whichever is the earlier event), shall establish a contract for the supply and purchase of the Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.
- 3.2 The Customer shall provide the Supplier purchase order/purchase order number relating to the applicable Customer Proposal. The Supplier will not take any action related to any order until the purchase order/purchase order number has been received by the Supplier in writing.

4 SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable skill and care in providing the Services.
- 4.2 The Supplier shall use reasonable endeavours to meet any agreed performance dates, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 Upon completion of the relevant Services, the Supplier will notify Stilog I.S.T to deliver the Licensed Materials subject to the completion of the appropriate Stilog I.S.T. documentation or payment of any appropriate funds;

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
 - a. co-operate with the Supplier in all matters relating to the creation and completion of the Configuration Specification.
 - b. provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
 - c. provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;

- d. be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
 - e. to provide the Customer's Hardware to the recommended specification and within the agreed timeframe.
- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 5.4 Any consent given by the Supplier in accordance with clause 5.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.
- 5.5 The Customer shall indemnify the Supplier against all costs liabilities and expenses incurred by the Supplier as a result of the Customer providing incorrect or incomplete data to users and/or providing unsecure user access.

6 CHANGE CONTROL

If either party wishes to change the scope of the Services (including the Configuration Specification), it shall submit details of the requested change to the other in writing. The Customer accepts that any such change may result in an increase in the Supplier's charges and those charges will be specified and agreed as part of the change control process.

7 CHARGES AND PAYMENT

- 7.1 The prices for licences to use the Software and Services, (including Services and Training) are as detailed in the Customer Proposal.
- 7.2 The prices do not include:
- a. value added tax (or similar taxes as may be introduced from time to time in the United Kingdom) which will, where appropriate, be added to the amount of all invoices at the prevailing rate;
 - b. travel, accommodation and subsistence expenses and the costs of materials and services, except to the extent expressly stated in the Customer Proposal as being included.
- 7.3 Invoices are submitted either according to the payment schedule set out in the Customer Proposal or as otherwise provided under this Agreement.
- The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within the following time periods:

7.3.1 for the licencing of the Software the amount is 100% of the licence fee with the appropriate Licence Agreement if it is an on premise licence, in the case of a cloud licence the Customer can pay the licence fee on a monthly or annual basis, no licence will be provided to the Customer before an initial payment has been made.

7.3.2 for the Services the Customer will pay 50% of the fee set out in the Customer Proposal prior to the commencement of provision of Services and the remaining 50% within 30 days after Installation of the Software or 60 days from the date of the Customers purchase order, which ever is the earlier date or If a Customers purchase order has not been received then 60 days from commencement of provision of Services.

- 7.4 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- a. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc., accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - b. demand payment of all invoices unpaid by the Customer (; and
 - c. suspend all Services until payment has been made in full.
- 7.5 Time for payment shall be of the essence of the Contract.
- 7.6 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7.8 The Supplier reserves the right to modify its prices at any time. Software and Services are charged on the basis of the rates in force on the date when the order is received. Information about prices and availability of the Software may be subject to change and are given indicatively.
- 7.9 Customer orders can be received by mail or email. Purchase orders must mention that the order is subject solely to "Agreed Oakfield General Conditions Of Sale". The Supplier reserves the right to cancel any order from a Customer with whom there is a dispute concerning the payment of a previous order.
- 7.10 Any dispute of an invoice must be received in writing within 3 weeks of date of invoice. If no dispute is registered within 3 weeks the invoice is deemed to be correct.
- 7.11 Settlement is due on the date indicated on the invoice. No discount will be given in the event of early settlement. Invoices are payable by cheque or preferably by bank transfer to the headquarters of Oakfield. Bank details are included on all invoices.

8 GRANT OF LICENCE

The Software shall be licenced to the Customer on the terms of the Software Licence and subject to acceptance of the licence application by Stillog I.S.T.

9 DOCUMENTATION

Associated with the licence of the Software, Supplier will provide the Customer online with relevant Documentation.

10 OWNERSHIP

- 10.1 Stillog I.S.T owns and retains all Intellectual Property Rights in the Software and the Documentation. Stillog I.S.T expressly reserves all rights not expressly granted to the Customer in this Agreement. The Customer agrees to promptly notify the Supplier in the event the Customer suspects or becomes aware of any misuse of the Software or the Documentation or the Supplier Services or any violation, infringement or misappropriation of the Stillog I.S.T proprietary rights.
- 10.2 The Customer will not distribute the Software or otherwise use, distribute or make available the Software except in strict accordance with the terms and conditions of this Agreement. Without limiting the generality of the foregoing, the Customer will not (i) copy or duplicate the Software in excess of the number of licenses purchased; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Software is compiled or interpreted, and the Customer hereby acknowledges that nothing herein will be construed to grant the Customer any right to obtain or use such source code; (iii) distribute the Software in any form other than the form delivered by the Supplier to the Customer or otherwise permitted under this Agreement; (iv) modify, further develop or create any derivative product from the Software without the prior written consent of the Supplier; (v) permit use of the Software by any End User except as intended when installed; or (vi) assign, sublicense, sell, lease

or otherwise transfer or convey, or pledge as security or otherwise encumber, the Customer's rights under this Agreement.

11 CONFIDENTIALITY, DATA PROTECTION AND SUPPLIER'S PROPERTY

- 11.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 11.2 The Supplier shall comply with the Data Protection Act 1998 ("the 1998 Act") and any other applicable data protection legislation. In particular the Supplier agrees to comply with the obligations placed on the Customer by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act.
- 11.3 The Supplier shall obtain prior agreement of the Customer, such agreement not to be unreasonably withheld or delayed, to store or process Personal Data for the purpose of performing the Supplier's obligations under the Contract at sites outside the United Kingdom.
- 11.4 Both parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Supplier providing the Customer with reasonable assistance in complying with subject access requests served on the Customer under Section 7 of the 1998 Act and the Supplier consulting with the Customer prior to the disclosure by the Supplier of any Personal Data in relation to such requests.
- 11.5 The integrity and security of data and software owned by or under the control of the Customer, in whatever form, is the responsibility of the Customer.
- 11.6 In the event of loss or corruption of data or software owned by or under the control of the Customer, due to the wilful act or default of the Supplier, the Supplier shall render reasonable assistance, if so requested by the Customer, in returning such data or software to an operational state. If such loss or corruption of data is not a result of a wilful act or default of the Supplier, the Supplier may, should the Supplier agree to provide assistance, recover from the Customer all reasonable costs of rendering such assistance.
- 11.7 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 11.8 This clause 11 shall survive termination of the Contract, however arising.

12 PROVISION OF SUPPORT SERVICES

In order for the Software Licence to be valid there must be a valid Support Agreement in place. The service levels and scope of this service is covered in the Maintenance Agreement.

13 LIMITATION OF LIABILITY

- 13.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - a. any breach of the Contract howsoever arising;
 - b. any use made by the Customer of the Services, the Deliverables or any part of them; and
 - c. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these conditions excludes the liability of the Supplier:
- a.** for death or personal injury caused by the Supplier's negligence; or
 - b.** for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.2 and clause 13.3:
- a.** the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - b.** the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £250,000.
- 13.5 The Customer shall indemnify the Supplier against any loss, liability or costs suffered by the Supplier due to any claim brought against the Supplier by any third party concerning the Customer or their employees or agents allowing improper access to data, providing incorrect data or infringing any third party's Intellectual Property Rights.

14 TERMINATION

- 14.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- a.** the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - b.** an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
 - c.** an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - d.** a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - e.** the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - f.** the other party ceases, or threatens to cease, to trade; or
 - g.** there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the other party; or

h. the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

14.2 The Supplier may terminate this agreement at anytime should the Customer fail to have a valid Maintenance Agreement and Software Licence for any reason.

14.3 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

15 FORCE MAJEURE

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16 WAIVER

16.1 A waiver of any right under the Contract is only effective if it is in writing and agreed by both parties.

16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17 SEVERANCE

17.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18 ENTIRE AGREEMENT

18.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.

18.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Contract.

18.3 Nothing in this clause shall limit or exclude any liability for fraud.

19 ASSIGNMENT

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including

without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21 THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it (including Stillog I.S.T) and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

22 NOTICES

22.1 Any notice given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or recorded delivery post or email to the address of the party as set out at the beginning of this Agreement, or to such other address notified to the other parties.

22.2 The email addresses for notices for each party are as stated below (or as notified to the other party from time to time):

Customer:

Supplier: legal@oakfieldsoftware.co.uk

22.3 A notice delivered by hand is deemed to have been received when delivered (or if delivery is not in business hours, 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email must contain a PDF of the notice as an attachment, identify in the subject line of the email that it is a formal notice under this contract and be sent to the email address stated above. The sender should retain a copy of the sent email showing a record of the time it was sent and the address as proof of sending.

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

23 DISPUTE RESOLUTION

23.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 23 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

23.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:

a. [the Customer's Project Manager and the Supplier's Project Manager shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then]

b. the matter shall promptly be referred by either party to the Managing Director of the Customer and the Managing Director of the Supplier for immediate resolution.

23.3 If, within 14 days of the matter first having been referred to the last escalation point defined in clause 23.2b no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 23 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 this agreement in respect of such matter without further reference to the dispute resolution process.

23.4 For the avoidance of doubt, this clause 23 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

24 GOVERNING LAW AND JURISDICTION

- 24.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 24.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).