

# TERMS AND CONDITIONS SEREMA – Online Postage Solution

Our service [www.app.serema.co.uk](http://www.app.serema.co.uk):

## **Frama UK Ltd. – serema Solution Terms of Business**

### **Parties**

- (1) FRAMA (UK) LIMITED incorporated and registered in England and Wales with company number 02455845 whose registered office is at 12 Helmet Row, London, EC1V 3QJ (Supplier).

### **Background**

- (1) The Supplier is the licensor of software used to provide an online facility to frank specific Royal Mail products for letters and parcel products online using the Customers own printer (“online franking”).
- (2) The Supplier has agreed to licence the Customer to use such software and such software and such services.
- (3) To access the Royal Mail products via the Serema Online software Frama UK will apply for a licence to Royal Mail on behalf of the customer.

### **Agreed terms**

## **1 Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this licence.

**Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

**Business Day:** a day other than a Saturday, Sunday or public holiday when banks in London are open for business.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, good-will and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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. Primary Period has the meaning given in clause 10.1.

Specification: the specification of the Software as set out in the Proposal Document.

1.2 Holding company and subsidiary mean a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members’ rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.4 Unless the context otherwise requires:

(a) words in the singular shall include the plural and in the plural shall include the singular;

(b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

(c) a reference to one gender shall include a reference to the other genders; and

(d) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

1.11 References to clauses are to the clauses of this agreement.

## **2 Delivery**

2.1 The Supplier shall make the Software available to the Customer within 5 Business Days of signature of the Serema Order Form.

## **3 Free Trial**

3.1 The Supplier may make an offer of a promotional free trial for a set period of days. During the free trial period the Customer will not be required to pay a licence fee for the use of the software. The Customer will only need to pre-pay for the postage used in this period. The postage amount will be paid by the Customer via a credit or debit card.

3.2 If the free trial is not cancelled before the end of the agreed trial period a licence fee charge will be made. The licence fee charged will be at the price advertised at the time the offer of the free trial was accepted. The licence fee charge will be made using the same Customer credit or debit card that was used for the postage fee (top up)

3.3 Postage amounts (postage top ups) cannot be refunded and any postage held on a Customer account must be used prior to the cancellation of the trial period.

## **4 Licence**

4.1 In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence for a term of the Primary Period of 12 months (or the duration of the Serema Plan as described in the Serema Order Form if not ordered online) from the date of this licence to use the Software and the Services.

4.2 In relation to scope of use:

(a) for the purposes of clause 4.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);

(b) the Customer may not use the Software other than as specified in clause 4.1 and clause 4.2(a) without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;

4.3 The Customer shall not:

(a) sub-licence, assign or novate the benefit or burden of this licence in whole or in part;

(b) allow the Software to become the subject of any charge, lien or encumbrance; and

(c) deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of the Supplier.

4.4 The Supplier may at any time sub-licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

4.5 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

4.6 The Customer shall:

(a) notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;

(b) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licenced any such unauthorized use on the date when such use commenced.

4.7 The Customer shall permit the Supplier to inspect any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## **5 Fees**

5.1 Subject to clause 3.1 and 4.2, the Customer shall pay to the Supplier licence fees (Fees) in accordance with the terms set out in the Serema Order Form or as advertised on the Frama.com website.

5.2 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

5.3 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc'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.

5.4 In addition to the licence fee the Customer will need to pay for the postage used to Royal Mail via the Serema software. The postage fees are paid in advance and held on account for the Customer by Frama UK Ltd.

5.5 Any monies pre-paid for postage must be used within the licence period. Any remaining postage balance at the end of the licence period is non-refundable.

## **6 Confidentiality and publicity**

6.1 Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

6.2 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), or required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **7 Export**

7.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export

requires an export licence or other governmental approval without first obtaining such licence or approval.

7.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## **8 Supplier's warranties**

8.1 The Supplier warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this licence (Warranty Period). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination), provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

8.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

8.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer. Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

8.4 The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is".

8.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **9 Limits of liability**

9.1 Except as expressly stated in clause 8.2:

(a) the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) any indirect or consequential loss; or
- (vii) loss or corruption of data,

(b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and

(c) the Customer agrees that, in entering into this licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

9.2 The exclusions in clause 7.5 and clause 8.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which may not be excluded by law.

9.3 All dates supplied by the Supplier for the delivery of the Software or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

9.4 All references to "the Supplier" in this clause 8 shall, for the purposes of this clause and clause 17 only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 17.

## **10 Intellectual property rights**

10.1 The Customer acknowledges that all Intellectual Property Rights in the Software belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.

## **11 Duration and termination**

11.1 The term of this agreement shall be 12 months (the Primary Period) and shall automatically continue after the Primary Period for a further year unless either party gives not less than 3 months' notice in writing expiring at the end of the Primary Period that it does not wish it to continue. Thereafter, unless the agreement is terminated at the end of the Primary Period, it shall automatically continue for consecutive periods of one year unless notice in writing is given by either party to the other not less than 1 month before the commencement of a forthcoming year that it wishes the agreement to terminate.

11.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

(g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.3(c) to clause 10.3(i) (inclusive); or

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

11.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11.5 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11.6 On termination for any reason:

(a) all rights granted to the Customer under this licence shall cease;

(b) the Customer shall cease all activities authorised by this licence;

(c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under this licence;  
and

(d) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

11.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement including clause 1, clause 5, clause 6, clause 7 (except clause 7.1), clause 8, clause 10 shall remain in full force and effect.

## **12 Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **13 Remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **14 Entire Agreement**

14.1 This licence and the Serema Order Form contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

14.2 Each party acknowledges that, in entering into this licence and the documents referred to in it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (Representation) other than as expressly set out in this licence or those documents.

14.3 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 this licence.

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

## **15 Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **16 Severance**

16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

16.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **17 Counterparts**

This agreement may be executed in any number of counter- parts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **18 Third-party rights**

Except as expressly provided in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **19 No partnership or agency**

19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **20 Force majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

## 21 Notices

21.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by registered email to:

(i) Supplier: the email address set out in the Serema Order Form.

(ii) Customer: the email address set out in the Serema Order Form.

21.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(c) if sent by registered email, at 9.00 am on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

## 22 Governing law and jurisdiction

22.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it on the Serema Order Form.

## 23 Data Security and Data Protection Policy

By entering into this agreement you are agreeing to the terms of the Frama UK Data Processing Agreement & Frama UKs Data Privacy Notice

All Frama UK Data Protection policies can be found at <https://frama.com/en-gb/terms-of-use/>

Frama (UK) Ltd V2/22