



## Terms and Conditions of Service



## 1 Terminology

The following terminology shall apply:

<b>E Squared:</b>	<b>E Squared UK Limited</b> , a company incorporated in England under number 06645163, whose registered office is at 2 Wellington Place, Leeds, LS1 4AP, UK.
<b>Client:</b>	Any individual, company or organisation entering into an <b>Agreement</b> to procure from <b>E Squared</b> .
<b>Services:</b>	<p><b>E Squared's</b> People and Process Performance Services including: Self Start, Guided Start, Quick Start, Kick Start, Self Improvement, Guided Improvement, Accelerated Transformation, Outsourced Transformation.</p> <p><b>E Squared's</b> Complex Project Lifecycle Management Services including: Self Management, Guided Management, Accelerated Management, Outsourced Management, Self Optimisation, Guided Optimisation, Accelerated Optimisation and Outsourced Optimisation.</p> <p><b>E Squared's</b> Enterprise Automation Services including: Self Specification, Guided Specification, Accelerated Specification and Outsourced Specification.</p>
<b>Software:</b>	<b>Pmap Studio, Qmap Studio</b> and other software provided by <b>E Squared</b> as part of the <b>Services</b> .
<b>Server:</b>	One installation of the <b>Software</b> which can be on a single physical server or a single virtual installation on a server farm.
<b>User:</b>	Any user granted access to the <b>Software</b> on the installed <b>Server</b> including Author, Analyst, Approver and End User.
<b>User Community:</b>	An unlimited number of <b>Users</b> granted access to the <b>Software</b> on the installed <b>Server</b> .
<b>Named location or locations:</b>	The specific location or locations at which the <b>Client</b> has established a <b>User Community</b> .
<b>Year:</b>	A continuous period of 12 months.
<b>Service period:</b>	A number of <b>Years</b> during which <b>Services</b> and <b>Software</b> will be made available to the <b>Client</b> by <b>E Squared</b> .
<b>Subscription:</b>	A payment made in advance in consideration of an <b>Agreement</b> to procure <b>Services</b> and <b>Software</b> for a specified <b>Service Period</b> .
<b>Annual Subscription:</b>	An annual payment in advance in consideration of an <b>Agreement</b> to procure <b>Services</b> and <b>Software</b> for a <b>1 Year Service Period</b> .
<b>Fixed price annual subscription:</b>	A series of annual payments in advance which are fixed at the outset in consideration of an <b>Agreement</b> to procure <b>Services</b> and <b>Software</b> for a <b>Service Period</b> of <b>2 Years</b> or more, up to a maximum of <b>5 Years</b> .
<b>Capitalised subscription:</b>	A single discounted payment in advance in consideration of an <b>Agreement</b> to procure <b>Services</b> and <b>Software</b> for a <b>Service Period</b> of <b>2 Years</b> or more, up to a maximum <b>5 Years</b> .

## 2 Service Components

Depending on the Service or Services procured by the Client, one or more of the following components will be provided for the Service Period.

### A. Software

- 1) A Subscription to the Software.
- 2) On-going maintenance and automatic updating of the Software.
- 3) Online and email Software technical support. See 2.1 following.
- 4) Software usage training videos.

### B. Specialists' Time

- 1) Face to Face Training and Coaching in the relevant and specific application of the Software in the Services as defined in the Quotation. This may include but is not limited to IDEF0, Activity Costing and Analysis, Lean, Lean Six Sigma and the Theory of Constraints.
- 2) Hands-on Process Definition, Design, Structuring, Measurement, Analysis, Improvement, Control and Communication work as defined in the Quotation to enable the Client to exploit the Services to realise specific business goals within defined timescales.
- 3) Outsourced process definition, design, structuring, measurement, analysis, improvement, control and communication to deliver a turnkey result for the Client as defined in the Quotation.
- 4) Continuous Professional Development Programmes to enable the Client to maintain and grow internal skills and develop internal centres of excellence in the use and application of the Software as defined in the Quotation.

## 2.1 Software Maintenance and Technical Support

E Squared undertakes to provide Software Maintenance and Technical Support to clients throughout the UK and abroad. The support team is organised to deliver:

- A. Technical support for installation and configuration
- B. First line Helpdesk for perceived software faults
- C. Second and third line software investigation and correction
- D. Product enhancements and upgrades

### 2.1.1 Helpdesk Conditions

- A. Normal Helpdesk operating hours:

Monday to Thursday inclusive:	GMT 08:30 until 17:00
Friday:	GMT 08:30 until 16:00

- B. UK Public Holidays are excluded
- C. Training related queries excluded
- D. Queries must be logged by emailing [support@esquaredgroup.co.uk](mailto:support@esquaredgroup.co.uk)
- E. E Squared reserves the right to vary Helpdesk conditions with 30 days' notice

### 2.1.2 Issue Prioritisation

**E Squared** will evaluate each issue logged by the **Helpdesk** and will allocate one of the following Priority Codes:

<b>A</b>	The issue is stopping all work on the <b>Software</b> installation.
<b>B</b>	The issue is impacting a particular <b>Software</b> function or user.
<b>C</b>	The issue is impacting a particular <b>Software</b> function or user but cannot be reproduced.
<b>D</b>	The issue is cosmetic.

### 2.1.3 Response Times

**E Squared** undertakes to investigate and report progress against the following timescales for each Priority Code:

<b>A</b>	<p>If reported within normal <b>Helpdesk</b> hours: <b>E Squared</b> will investigate immediately.</p> <p>If reported outside Helpdesk hours: <b>E Squared</b> will investigate when the <b>Helpdesk</b> next opens and report progress to the <b>Client</b> at 4 hourly intervals within the working day by email from that point.</p> <p>In both cases <b>E Squared</b> will assign an Issue Manager to liaise with the <b>Client</b> and agree a co-ordinated action plan to resolve the problem.</p>
<b>B</b>	<p><b>E Squared</b> will provide a workaround within 5 working days of obtaining all necessary information to undertake the investigation.</p> <p>Preventative fixes to the software will be rolled out at <b>E Squared's</b> discretion.</p>
<b>C</b>	<p><b>E Squared</b> will aim to provide a workaround within 5 working days of obtaining all necessary information to undertake the investigation.</p> <p>If any related fault has not been reproduced by the <b>Helpdesk</b> or has not recurred at the Client's site, <b>E Squared</b> will close the log regarding the issue after 10 days.</p> <p>If the issue continues <b>E Squared</b> will investigate preventative fixes to the software and will roll these out at our discretion.</p>
<b>D</b>	<b>E Squared</b> will add the issue to its register of candidates for future work.

#### 2.1.4 Version Release Schedule

- A. Product Enhancements and Upgrades will be released at a frequency to be determined by **E Squared**.
- B. Any interim versions are designed to fix specific issues and are distributed to selected **Clients** only at the discretion of **E Squared**.

#### 2.1.4 Software Version

- A. **Clients** are advised to use the latest version of the **Software** provided.
- B. Updates and fixes to the **Software** are only applied to the latest release version.

### 3 Procuring the Services

#### 3.1 Software Version

**E Squared** offers the **Client** the following options for purchasing the **Services**.

- A. The **Client** may subscribe to the **Services** annually. In this case the **Service Period** is 1 year and the **Subscription** payment is termed an **Annual Subscription**.
- B. The **Client** may subscribe to the **Services** for a fixed period of time provided that the fixed period is a minimum of 2 years and a maximum of 5 years. In this case the **Service Period** is the fixed period agreed at the outset of the contract but the **Client** pays for this as an **Annual Subscription**, the price of which is fixed at the outset of the contract. This **Subscription** payment is termed a **Fixed Price Annual Subscription**.
- C. The **Client** may subscribe to the **Services** for a fixed period of time provided that the fixed period is a minimum of 2 years and a maximum of 5 years. In this case the **Service Period** is the fixed period agreed at the outset of the contract and the **Client** subscribes for the whole contract in one discounted sum. This **Subscription** payment is termed a **Capitalised Subscription**.

#### 3.1 Purchase Quotations

**E Squared** shall describe the **Purchasing Option** selected by the **Client** in a **Quotation**.

- A. The Quotation shall include:
  - 1) A definition of the Services to be provided.
  - 2) The Service Period.
  - 3) The appropriate Subscription.
  - 4) Confirmation of the Payment Terms.
  - 5) Each Quotation shall be valid for a defined period specified in the Quotation.

#### 4 Invoicing and Payment Terms

The following Invoicing and Payment Terms shall apply unless varied by specific Payment Terms contained in the Quotation.

- A. E Squared shall issue two invoices to the Client in advance of the Service Period.
- B. The first invoice shall represent 50% of the Service component for the Service Period as specified in the accepted Quotation, except where the chosen Subscription is a Capitalised Subscription, in which instance the first invoice shall represent 50% of the Service component for the first Year of the Service Period as specified in the accepted Quotation.
- C. The first invoice shall be paid by the Client prior to commencement of the Service Period.
- D. The second invoice shall represent the remaining 50% of the Service component and the whole of the Software component for the Service Period inclusive of maintenance and support as specified in the accepted Quotation.
- E. The second invoice shall be paid by the Client within 30 days of the invoice date which will normally be the date of commencement of the Service Period .
- F. E Squared Specialists' travelling, accommodation and subsistence Expenses will be additional to the Subscription as specified in the accepted Quotation.
- G. Expenses shall be invoiced as accrued, monthly in arrears and shall be paid by the Client within 30 days of the invoice date.
- H. Charges for additional Specialists' time, Customisation and any other ad hoc Services will be subject to separately invoiced Quotations.
- I. E Squared reserves the right to charge Late Payment Fees of 2% per month on the net invoice value where invoices have not been paid by the indicated payment date.
- J. All invoices will be subject to VAT at the prevailing applicable rates.

#### 5 Warranty

**E Squared** warrants it shall perform its **Services** in accordance with the current standards of care and diligence normally practiced by recognised firms in performing services of a similar nature.

#### 6 Insurance

- A. **E Squared** shall maintain in force Products Liability Insurance of £1,000,000 for any one event, throughout the **Service Period** that the **Services** are performed.
- B. **E Squared** shall also maintain during such **Service Period** Public Liability Insurance, covering bodily injury to or death of persons and/or loss of or damage to material property of parties other than the **Client** in a combined single limit of £1,000,000 for any one event.

## 7 Limit of Liability

- A. **Products Liability** – Irrespective of the number of parties and/or entities entitled to indemnity & the number of claimants the total amount payable in respect of any one event and in the aggregate shall not exceed the limit of liability: £1,000,000.
- B. **Public Liability** – Irrespective of the number of parties and/or entities entitled to indemnity & the number of claimants the liability in respect of any one event shall not exceed the limit of liability: £1,000,000.

## 8 Services Out Scope

In the event that an issue logged under the **Services Agreement** is proved not to be attributable to **E Squared Software** or **Services**, **E Squared** shall be entitled to recover the reasonable costs incurred in the investigation of the issue from the logging **Client**.

## 9 Termination

- A. Either the **Client** or **E Squared** may terminate the **Agreement** giving 3 months' written notice.
- B. Should **E Squared** become insolvent or bankrupt, or should it commit a substantial breach of a material provision of the **Agreement** and should **E Squared** thereafter fail to commence proceedings to remedy such breach within 14 days after receipt of a written demand from the **Client**, the **Client** may terminate the **Agreement**.
- C. Should the **Client** become insolvent or bankrupt or commit a breach or default of any of the covenants or obligations hereunder and either fail to remedy the same within 14 days after written notice thereof from **E Squared** if the breach is a failure to pay money, or fail to commence to remedy the same within 14 days after written notice from **E Squared** and thereafter to proceed diligently to remedy the same if the breach is other than to pay money, then **E Squared** reserves the right to suspend the **Services** and/or terminate the **Agreement**.

## 10 Assignment and Subcontracting

- A. The **Agreement** shall not be assignable by either party without the prior written consent of the other party. No assignment of the **Agreement** shall be valid until the **Agreement** has been assumed by the assignee.
- B. **E Squared** may subcontract any portion of the **Services** to a subcontractor approved by **E Squared**.
- C. Specifically, **E Squared** may have portions of the **Maintenance Services** performed by its affiliated entities or their employees.
- D. In any circumstances where **E Squared** has subcontracted **Services**, **E Squared** shall be responsible for such **Services** and the **Client** will rely solely on **E Squared** as if the **Services** were performed by **E Squared** alone.

## 11 Changes

Changes to the **Agreement** shall not come into force until the **Client** and **E Squared** have agreed to such changes in writing.

## 12 Independent Contractor

**E Squared** shall perform the **Services** as an independent contractor.

## 13 Solicitation of Employment

Neither party shall, during the term of the **Agreement** or for a period of 180 days thereafter, directly or indirectly for itself or on behalf of, or in conjunction with, any other person, partnership, corporation, business or organisation, solicit, hire, contract with or engage the employment of an employee of the other with whom that party or its personnel have had contact during the course of the **Services** under the **Agreement**, unless that party has obtained the written consent of the other to such hiring and that party pays to the other a fee to be mutually agreed upon.

## 14 Force Majeure

Any delays in or failure of performance by either party shall not constitute a default hereunder if such delays or failures of performance are caused by an event of Force Majeure. For the purposes of the **Agreement** an event of Force Majeure means occurrences beyond the reasonable control of either party, including but not limited to: acts of God; compliance with any order of any governmental authority; changes in law; act of war, rebellion or sabotage or damage resulting there from; fires, floods, explosion, accidents, riots; strikes or other concerted acts of workmen; or any other causes, whether similar or dissimilar, which are beyond the reasonable control of **E Squared**. Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

## 15 Interpretation

In the event that any portion or all of the **Agreement** is held to be void or unenforceable, the parties agree to negotiate in good faith to amend the commercial and other terms of the **Agreement** in order to effect the intent of the parties as set forth in the **Agreement**. The **Agreement** shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

## 16 Rights of Third Parties

A person who is not a party to the **Agreement** has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the **Agreement**, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.