

Eramba Limited: Reseller Agreement

Eramba Limited
Registered Office: 71-75 Shelton Street, Covent Garden, London, England WC2H 9JQ
Company Number: 09524547

Front Sheet

Reseller:	
Reseller Contact:	
Tel:	
Contact E-mail Address:	
Postal Address:	
Reseller Discount:	<ul style="list-style-type: none">● 40% off Eramba's current price list for the Services for the first and all subsequent renewals purchase
Start Date and Term:	<ul style="list-style-type: none">● Start Date:● Term: 12 Months
Services:	<ul style="list-style-type: none">● Eramba's IT governance, risk management & compliance application software known as <i>Eramba Enterprise Version</i>
Territory and Sector:	

By signing this Front Sheet you agree to the attached Eramba Limited Reseller Terms & Conditions

Signed: On behalf of Reseller	
Date:	
Signed: On behalf of Eramba Limited	
Date:	

ERAMBA LIMITED RESELLER TERMS & CONDITIONS

1. DEFINITIONS

1.1 In this Agreement the words defined on the Front Sheet shall have the meaning given to them within the Front Sheet and in addition the following words shall have the following meanings:

Agreement	these terms and conditions and the Front Sheet;
Confidential Information	shall have the meaning given to it in Clause 13;
Customer	a person in the Territory who purchases Services as a direct result of the acts of the Reseller, and not as a result of any act of Eramba or any other reseller;
Eramba	Eramba Limited, a company registered in England and Wales with registered office at 71-75 Shelton Street, Covent Garden, London, England WC2H 9JQ and company number: 09524547;
Eramba Terms and Conditions	the then current version of Eramba's terms and conditions for the supply of the Services;
Fee	Eramba's list price for the Services less any discount agreed on the Front Sheet;
IP Rights	any patent, copyright, registered design, unregistered design right, trade mark or other intellectual property together with any current applications for any registrable items of the foregoing;
Reseller Logo	the logo provided by the Reseller to Eramba;
Software	Eramba's software known as the <i>Eramba Enterprise Version</i> ;
Working Day	any day other than a Saturday, Sunday or public holiday in England.

1.2 Words in the singular include the plural and words in the plural include the singular.

1.3 Clause headings shall not affect the interpretation of this Agreement.

1.4 References to Clauses are references to the Clauses of this Agreement.

- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 1.7 A **person** or **third party** includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.8 Any phrase introduced by the words **including** or **includes** shall be construed as illustrative and shall not limit the generality of the related general words.

2. **APPOINTMENT**

- 2.1 Eramba hereby appoints the Reseller as its authorised reseller to promote, market and sell the Services in the Territory to the Sector, at all times on the terms of this Agreement and the Reseller hereby accepts such appointment.
- 2.2 Eramba may appoint third parties in relation to the promotion, distribution and/or sale of the Services in the Territory and to the Sector and may itself promote, distribute and/or sell the Services in the Territory and to the Sector.
- 2.3 The Reseller shall not incur any liability on behalf of Eramba or pledge the credit of Eramba, nor give any condition, warranty or make any representation on Eramba's behalf relating to the Services that are inconsistent with the Eramba Terms and Conditions.
- 2.4 The Reseller shall not promote, market and sell the Services outside of the Territory and the Sector. If it receives an enquiry in relation to the Services from outside of the Territory and the Sector, it shall pass such enquiry to Eramba.
- 2.5 The Reseller confirms that all information provided to Eramba, including the information on the Front Sheet, is accurate and complete and the Reseller shall notify Eramba of any changes to that information.

3. **RESELLER'S OBLIGATIONS**

The Reseller agrees with Eramba at all times during the Term that it shall at its own reasonable cost and expense:

- 3.1 look after the interests of Eramba and act towards Eramba dutifully and in good faith;
- 3.2 use its reasonable endeavours to promote and sell the Services in the Territory to the Sector with all due care and diligence, and, subject to Clause 4, to negotiate, conclude and enter into contracts for the sale of the Services;
- 3.3 comply with all reasonable and lawful instructions of Eramba concerning the marketing and sale of the Services in the Territory;
- 3.4 use its reasonable endeavours to promote and protect Eramba's interests and enhance and maintain the reputation of the Services;

- 3.5 be entitled to describe itself in dealings with potential Customers and Customers as an authorised reseller of Eramba;
- 3.6 promptly and without making any admissions to the Customer, inform Eramba of any complaint or after-sales enquiry concerning the Services received by the Reseller; and
- 3.7 inform Eramba without undue delay of any change in control of the Reseller and/or of any change in its organisation or method of doing business which might affect the performance of the Reseller's duties under this Agreement.

4. **SALE OF SERVICES**

- 4.1 The Reseller shall submit Orders via electronic means as may be agreed between the parties and each Order shall contain full details of the Customer and the Services required together with a copy of the Eramba Terms and Conditions signed by the Customer. Eramba has the right to accept or reject each Order within 7 working days at its discretion.
- 4.2 The Reseller will be solely responsible for, and will pay any sales, use, excise, transfer, value-added and any other taxes and levies (other than taxes based on Eramba's income) that are imposed by any governmental authority in connection with this Agreement.
- 4.3 The Reseller shall be solely responsible for and bear any cost relating to any withholding taxes and/or other such assessments which may be imposed by any governmental authority with respect to any amounts due to Eramba.
- 4.4 The Reseller shall pay to Eramba the Fee within 45 days of receipt of invoice. All sums payable under this Agreement are inclusive of value added or other sales tax.
- 4.5 Support Services provided under these Conditions shall not commence until Eramba receives a completed Order from the Reseller.
- 4.6 If the Reseller is late in paying any sum due under these Conditions, Eramba:
 - 4.6.1 reserves the right to charge the Reseller interest at a rate of 2% per annum above the Bank of England base rate, on a daily basis from the date payment becomes due until Eramba has received payment of the overdue amount together with all interest that has accrued; and
 - 4.6.2 has the right to suspend all Support Services until it has received payment of the overdue amount together with any accrued interest.

5. **ERAMBA'S UNDERTAKINGS**

Eramba undertakes and agrees with the Reseller at all times during the term of this Agreement that it shall:

- 5.1 act in its relations with the Reseller dutifully and in good faith;
- 5.2 supply to the Reseller at Eramba's own expense documentation and information and such technical, market and other support and training as the Reseller may from time to time reasonably required for the purposes of promoting and selling the Services;
- 5.3 provide remote support on any sales meeting at times, dates and frequencies reasonably agreed;

- 5.4 provide a demonstration environment for the Reseller; and
- 5.5 perform the Services in line with good industry practise and should Eramba use subcontractors in the performance of the Services, Eramba shall be liable for the performance of the subcontractor as if Eramba was performing the Services itself.

6. **ADVERTISING AND PROMOTION**

- 6.1 The Reseller shall not produce any marketing materials that will misrepresent Eramba. Any such marketing materials shall comply with all applicable laws and regulations in the Territory, and shall not include any IP Rights owned by a third party without the prior written permission of such third party.
- 6.2 Eramba reserves the right to advertise and promote the Services in the Territory, and Eramba shall from time to time, notify the Reseller with details of such advertising and promotions and should those promotions refer to Reseller, obtain the prior written permission of the Reseller to do so.
- 6.3 Eramba shall include the Reseller Logo on the Eramba website and such Reseller Logo shall link to the Reseller's website.
- 6.4 The Reseller acknowledges and agrees that without prejudice to Clause 6.3, the Reseller's contact details shall be included on materials produced by Eramba and distributed to potential customers.

7. **REPORTING & AUDIT**

- 7.1 The Reseller shall maintain records of its activities under this Agreement, including its marketing activities and contact with Customers and potential Customers.

8. **IP RIGHTS**

- 8.1 No IP Rights in the Services shall transfer to the Reseller under this Agreement or otherwise.
- 8.2 The Reseller shall immediately notify Eramba of any claim it receives that the Services or any marketing materials or activities, including such materials provided by Eramba, under this Agreement infringe any third party IP Rights. Eramba has the sole right to defend and settle any proceedings for any alleged infringement of IP Rights of any third party. The Reseller shall provide Eramba at Eramba's cost with all reasonable assistance requested by Eramba relating to such action.

9. **WARRANTIES & LIABILITY**

- 9.1 Each of the parties warrants that it has full power and authority to enter into this Agreement and that the performance of this Agreement shall not breach any other agreement entered into by it.
- 9.2 Each party shall comply with all applicable laws and regulations including the Data Protection Act 2018 and the Bribery Act 2010,. Each Party shall promptly report to the other Party any complaint received by a third party in relation to any breach of applicable laws and/or regulations, and any request or demand for any undue financial or other advantage of any kind received in connection with the Services;

- 9.3 Neither Party gives any warranties in relation to the Services except as set out in the Eramba Terms and Conditions.
- 9.4 Except as set out in this Agreement, and to the extent permitted by law, no representations, warranties or conditions are given or assumed by Eramba or Reseller. Except as set out in this Agreement, each Party agrees that it has not relied upon any representations, warranties or conditions to enter into this Agreement.
- 9.5 Each Party hereby excludes any and all liability to the other Party for (a) loss of profit; (b) business interruption; (c) loss of business opportunity or anticipated saving; and neither Party shall be liable to the other for any any indirect or consequential or incidental loss incurred by a party even if advised of the possibility of such losses. The provisions of this Clause 9.5 are severable.
- 9.6 Each Party's entire liability to the other Party under this Agreement for all claims or series of claims, whether in contract, negligence (including tort and breach of statutory duty) or otherwise for any damages, losses or expenses shall be limited to three times the sum paid or payable by the Reseller to Eramba in the 12 months' preceding the date of the claim.
- 9.6 Nothing in this Agreement shall operate to limit or exclude liability for (a) death or personal injury resulting from negligence; (b) fraud or fraudulent misrepresentation; and/or (c) any other liability that may not lawfully be excluded under English law.

10 DURATION AND TERMINATION

- 10.2 This Agreement shall come into effect on the Start Date and, subject to this Clause 10, shall continue for the Term.
- 10.3 Either party may give written notice to the other party terminating this Agreement on at least 3 months' written notice.
- 10.4 Either party may give written notice to the other party terminating this Agreement with immediate effect if: (a) the other party commits any material breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within 10 Working Days of notice requiring the breach to be remedied; (b) the other party enters into liquidation compulsorily or voluntarily or compounds with its creditors or has an administrator, receiver or administrative receiver appointed over all or any part of its assets or takes or suffers any similar action in consequence of debt (except where any action occurs for the purposes of reconstruction or amalgamation whilst solvent) or anything similar or analogous occurs in any jurisdiction; and/or (c) if it, or the other party ceases, or threatens to cease, to carry on business.
- 10.5 Eramba shall be entitled to terminate this Agreement immediately upon written notice if the Reseller ceases to have the right to access the Services at any time.
- 10.6 If at any time the Reseller is prevented or hindered from carrying out its obligations under this Agreement for reasons beyond its control, including strikes, acts of God, war, riot, accident, fire, flood or ash cloud (save for COVID-19, which shall not be construed as a force majeure event), it shall notify Eramba accordingly and the Reseller's obligations under this Agreement shall be suspended. If such suspension continues for 1 month or more, either party may terminate this Agreement on 30 Working Days' notice.

11 EFFECTS OF TERMINATION

11.2 The Reseller and Eramba agree that their intention is that The Commercial Resellers (Council Directive) Regulations 1993, shall not apply to this Agreement but that if a court of competent jurisdiction determines that such Regulations do apply to this Agreement, the Reseller shall be entitled to be indemnified on termination.

11.3 On termination, the Reseller shall cease to offer for sale the Services.

11.4 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination. The following provisions shall continue in force following termination: Clauses 7, 8, 9, 11, 12, 13 and 14.

12 CONFIDENTIALITY

12.2 For the purposes of this Agreement, “**Confidential Information**” means all information, whether written or oral and in whatever medium which comes into a party’s possession and relates to the business, products, services, financial and management affairs, customers, employees or suppliers, plans, proposals, strategies or trade secrets of the other party.

12.3 During the Term and after expiry or earlier termination of this Agreement, each party shall keep confidential, and shall not use (other than for the purposes of this Agreement) and shall not disclose to any third party with the exception of a Party’s group companies, any Confidential Information of the other party, unless such Confidential Information: (a) was public knowledge or already known to the party at the time of disclosure; (b) subsequently becomes public knowledge other than by breach of this Agreement; and/or (c) subsequently comes lawfully into the possession of the party from a third party.

12.4 Either party shall be entitled to disclose Confidential Information of the other party if required to do so by any court, governmental or other administrative authority or regulatory body competent to require disclosure.

13 DISPUTE RESOLUTION

13.1 If a dispute arises between the parties in respect of the provision of this Agreement or the provision of a material obligation of this Agreement, then within 5 Working Days of the dispute arising, the dispute shall be escalated to a director or such other person of equivalent seniority as agreed between the parties. Within 5 Working Days of escalation such nominated persons shall meet in a good faith effort to resolve the dispute.

143.2 If no resolution to the dispute so referred has been agreed within a further 20 Working Days, then the parties will attempt to settle it by mediation in accordance with the Dispute Resolution (CEDR) Model Mediation Procedure. To initiate the mediation a party must give notice in writing to the other party to the dispute requesting mediation. Unless agreed between the parties, the mediator will be nominated by CEDR. The mediation will start no later than 5 Working Days after the date of the notice. The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

14 GENERAL

14.1 Nothing in this Agreement shall create or imply a partnership, agency or joint venture between the parties.

14.2 This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it. Save as expressly provided in this

Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

- 14.3 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 14.4 If any part of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement.
- 14.5 Neither Party shall assign, sub-contract or transfer its rights or obligations under this Agreement without the prior written consent from the other Party which will not be unreasonably withheld or delayed.
- 14.6 Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand, by email or by sending the notice by prepaid mail or airmail to the address of the relevant party set out in this Agreement or such other address or email address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery, if delivered by hand or by email, and within 2 days if sent by mail and 7 days if sent by airmail.
- 14.7 This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English Courts.