FAQ:

1. **Payment terms**
   - Section 7 of the new Order Form sets out detail of payment including payment amount, payment due date and invoicing date broken down for each service line. This should be properly tailored for each client before signing the Order Form.
   - Clause 12 of the general Ts&Cs sets out more detail about fees and expenses and clause 13 sets out more detail about payment.

2. **Something to cover additional support (outside of change requests) following go live - how we will approach and that it will be charged at £1200 per day**
   - This is covered in section 7 of the new Order Form, described as additional support falling outside of the support packages purchased by the Client.

3. **Enhanced Support package detail added**
   - Section 6 of the Order Form ('Support Services') sets out the support purchased by the Client, with the Enhanced Support Package as an option to be ticked/included or excluded.
   - Section 7 of the Order Form ('Financial Provisions') then sets out the Fee for the Basic Support Package (included in Subscription Services fees as we understand) and the Enhanced Support Package (£4,000 per year (subject to change), as in the Statement of Work template).
   - The Sirenum Service Level Agreement sets out service levels for availability, support and maintenance.

4. **Version for US / non-UK deals – e.g. mention of VAT not relevant.**
   - Clause 12.3 of the general Ts&Cs says that "All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to Sirenum."
   - Section 7 of the Order Form reiterates that Fees are stated exclusive of VAT. There is currently no column for VAT, although you could choose to add a column showing the VAT where applicable.

5. **Verbiage for deals where we roll PS into ARR.**
   - We are not looking to do this – however if this occurs, you could use section 7 of the Order Form to state that the Professional Services Fee will be payable annually over a number of years rather than upfront, and the annual payment date could be the same as the Subscription Services Fee to make invoicing easier. That way it is clear what Fees relate to which Service, while maintaining flexibility for timing of payments.

6. **If a client chooses to terminate midway through the contract, they are still liable to pay the remainder of the fees**
   - Under clause 22.1 of the general Ts&Cs, the Client can terminate without cause by giving at least 30 days' written notice, but the termination can only take effect at the end of the Minimum Term or any subsequent Contract Year.
   - (The "Minimum Term" means the period beginning on the Effective Date (date the Order Form is signed) and ending on the first anniversary of the Go Live Date. A "Contract Year" is a period of 12 months beginning on the Go-Live Date and on each anniversary of the Go-Live Date. The Go Live Date means the date on which the Subscription Services become available for use by the Client, as specified in the Order Form or as pushed back in accordance with Clause   or Clause   o."
   - However, either party can terminate immediately if the other party commits a breach or goes insolvent – in which case the Minimum Term/Contract Year would be irrelevant and termination could take effect part-way through a Contract Year.
   - Under clause 23.3, within 30 days following the termination of the Agreement for any reason except where Sirenum terminates because of the Client's breach or insolvency, the Client must pay to Sirenum any Fees in respect of Services provided to the Client before the effective date of termination of the Agreement and Sirenum must refund to the Client any Fees paid by the Client to Sirenum in respect of Services that were to be provided to the Client after the effective date of termination of the Agreement.
   - This means that if the Client terminates without cause/for convenience, that termination will only take effect at the end of the Minimum Term or Contract Year, and (i) if there are any Fees outstanding in respect of the period up to the end of the Minimum Term/current Contract Year, the Client will have to pay those Fees, and (ii) Sirenum wouldn't have to refund any fees unless somehow the client had already paid for something that was due to be delivered after the end of the Minimum Term/current Contract Year.
   - **N.B.** if the Client terminates because of Sirenum's breach or insolvency, the termination would take effect immediately so Sirenum would have to refund any Fees already paid for services that the Client will not receive because of the early termination. This is a standard approach in SaaS contracts and is usually seen as a fair balance, because otherwise the Client would have to pay for services that it doesn't receive from the provider because the contract was terminated as a result of the provider's breach.
   - If you want a longer Minimum Term to apply for any particular client, the definition of "Minimum Term" could be subject to any longer period stated in the Order Form with a particular client.

7. **Where a PO is required, the customer will raise this for the Subscription and SOW amounts on signing the contract**
   - We have added a clause at 13.2 saying "If the Client requires a purchase order in order to pay Sirenum's invoices, the Client shall ensure that a purchase order is raised and provided to Sirenum prior to the Effective Date and each subsequent applicable invoicing date set out in Section 7 of the Sirenum Services Order Form."
   - In Section 7 of the Order Form we've also added a bit about purchase orders, repeating the above instruction and also saying "Client's purchase order number for any payment of Fees payable on the Effective Date: [insert purchase order number]", which should act as a prompt to obtain the PO number before signing the Order Form.

8. **We need to protect ourselves when buying licenses from SF. For example, we sign a client in January so we put the order in with SF.**
   - Clause 2.1 sets out the Term of the Agreement – which starts on the Effective Date (the date the Order Form is signed) and continues in force indefinitely until terminated in accordance with the termination rights set out in the general Ts&Cs. This means that the agreement just continues unless the Client (or Sirenum) takes active steps to terminate it by serving written notice on the other party. Except for where Sirenum breaches the contract or goes insolvent, the Client can only terminate with effect from the end of the Minimum Term or the subsequent Contract Year.
   - See also the post-termination Client Fee payment obligations and refund situation in clauses 23.3 and 23.4 as described above, which mean that unless Sirenum does something wrong or goes bust, the Client is tied in and has to pay fees up to the end of the Minimum Term or the then-current Contract Year.

9. **When a client contract it automatically renew unless notified otherwise for 12 months whereby the price can increase if their workers have increased based on our current pricing model and not what was agreed in their contract.**
   - The client contract will effectively automatically renew under Clause 2.1 as described above, in that the agreement just continues unless either party takes active steps to terminate it.
   - Clause 12.4 allows Sirenum to vary (i.e. raise!) the Fees to take into account inflation and increased costs, saying "Sirenum may elect to vary any element of the Fees with effect from the end of the then-current Contract Year by giving to the Client not less than 30 days' written notice of the variation, providing that no such variation shall constitute a percentage increase in the relevant element of the Fees that exceeds 2% over the percentage increase, since the date of the most recent variation of the relevant element of the Fees under this Clause 12.4 (or, if no such variation has occurred, since the Effective Date), in the Retail Prices Index (all items) published by the UK Office for National Statistics." This does obviously restrict the amount by which the Fees can be raised by tying it to RPI, so check that this is suitable for Sirenum.
   - If the Client has increased the number of Users, this would be a breach of contract by the Client. Section 4 of the Order Form sets out the Agreed User Number for each Sirenum module, and Clause 4.4.2 of the general Ts&Cs says that "the Subscription Services must not be used at any point in time by more than the Agreed User Number". Under Clause 22.5, Sirenum is also able to terminate the agreement if the Client exceeds the Agreed User Number, Sirenum has given the Client notice of the excess number of users and the Client has not corrected the excess number of users 30 days after Sirenum's notice is given.
   - Another thing we could do is in Section 7 of the Order Form (financial provisions), state that the Fee for the Subscription Services is £XX per year per User, which would give Sirenum some flexibility to present an invoice with a higher Fee for the Subscription Services reflecting the higher number of actual Users.

10. **Our standard support explains we just fix bugs. Not obligated to debug user errors or misunderstanding of how the system works**
    - In the general Ts&Cs, "Support Services" is defined as "support in relation to the use of, and the identification and resolution of errors in, the Subscription Services as set out in section 6 of the Sirenum Services Order Form, and shall not include the provision of Training Services or the application of Updates or Upgrades".

- Section 6 of the Order Form specifies which support package the Client has purchased and that tailored ad hoc support is provided on request subject to payment of additional Fees as set out in section 7.
- In Clause 17.2 of the general Ts&Cs, Sirenum warrants that the Subscription Services will be free from Subscription Services Defects and that the application of Updates and Upgrades by Sirenum will not introduce any Subscription Services Defects into the Subscription Services.
- "Subscription Services Defect" is defined as a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Subscription Services, but excluding any defect, error or bug caused by or arising as a result of: (a) any act or omission of the Client or any User; (b) any use of the Platform or Subscription Services contrary to the Documentation, whether by the Client or by any User; (c) a failure of the Client to perform or observe any of its obligations in the Agreement; (d) the Client choosing not to apply an Upgrade or Update to its production system through which the Subscription Services are accessed; and/or (d) an incompatibility between the Platform or Subscription Services and any other system, network, application, program, hardware or software not specified as compatible in the Subscription Services Specification".

11. GDPR breaches

- Sirenum will be responsible for some GDPR breaches and it can't escape liability for this. For example, it will be responsible for the following:
- As a controller, Sirenum is responsible for any GDPR non-compliance relating to personal data that it processes for the purposes of setting up client accounts, billing and payment processing, communicating with business contacts/clients, marketing activities
- As a processor, Sirenum is responsible for any failure to comply with the security requirements of the GDPR in respect of the Sirenum platform/SaaS, e.g. inadequate technical security measures applied to the software/platform or Sirenum staff fault/negligence leading to a breach of Client Personal Data.
- Sirenum will not be responsible for data subject requests from the end users of the Sirenum SaaS, i.e. Impellam and other client staff/workers. Those individuals should approach their employer or agency with any such requests, and that employer/agency who is a Sirenum client might ask Sirenum to help them respond to those requests.
- We now know that Salesforce does not contract directly with Sirenum clients (as we were originally assuming) (unless they have a pre-existing org). This means that Sirenum will be responsible under the GDPR for any breaches of the GDPR by Salesforce.

Nevertheless We've added an extra clause to the limitation of liability section as follows:

20.4. Sirenum shall not be liable to the Client in respect of any loss or damage arising as a result of:

20.4.1. [any breach by Salesforce of any contract between Salesforce and the Client] [*this only works where pre-existing org*];

20.4.2. any breach by Salesforce of Data Protection Laws;

20.4.3. any lack of availability of the Subscription Services caused by the acts or omissions of Salesforce, except where such lack of availability results from a breach by Sirenum of any contract between Sirenum and Salesforce.

12. **Not responsible if system goes down - we are subject to SF T&C**
    - Clause 20.4.3 shown above will help exclude liability for this except where Sirenum is at fault.
    - The Service Level Agreement document sets out availability commitments in section 1. This already said that "Sirenum's Service Availability commitment is based on Salesforce's own Availability Commitments, which can be viewed here: https://trust.salesforce.com/en/#systemStatus. Salesforce uses Tier 3 Data Centres across the world, which provide 99.95% availability."
    - We have added to that "Sirenum shall not be responsible or liable to the Client for downtime caused by Salesforce that is not attributable to the acts or omissions of Sirenum. However, where such downtime affects the availability of the Subscription Services, Sirenum will escalate the issue with Salesforce on behalf of Sirenum clients."

13. **Payment has to be made on the go live date regardless if the client delays**
    - Clause 3 of the general Ts&Cs (Professional Services) contain provisions addressing this, which we took from the Client agreement. These say that:
        - The Go-Live Date shall be extended to the extent that Sirenum is responsible for any delay to the Professional Services, in which case the Client may require that the first year's Subscription Services Fee is reduced pro-rata to the period of delay.
        - In the event that the Client is responsible for any delay to the Professional Services, Sirenum may determine (acting reasonably): (i) any extension to the Go-Live Date, provided that the Fees shall remain payable on the original due date; and (ii) any additional resources required for the Professional Services, for which the Client shall be charged at applicable Professional Services rates (on a time and materials basis).

14. **Sirenum need to be clear in order form if discounted price only applies for a limited period.**
    - You could use section 7 of the Order Form (financial provisions) to specify an initial discounted fee amount for the first X years, and a non-discounted amount for subsequent years. The non-discounted amount could be specified or for example refer to then-current list prices.

15. **Post-termination client data deletion and access**
    - We have summarized the position described in clause 23.5 of the general Ts&Cs as follows:
        - **i.** Upon termination of the Agreement the following Client Data deletion provisions shall apply:

    - Sirenum will permit the Client to access Client Data held within the Subscription Services for 30 days. During that time, the Client may obtain, copy and delete that Client Data itself. If the Client so requests, Sirenum will assist the Client with obtaining, copying or deleting that Client Data, provided that if the Client is able to do this itself using tools made available by Sirenum via the Subscription Services, Sirenum may charge the Client for such assistance at its standard time-based charging rates;

    - After 30 days, the Client will no longer be able to access or use the Subscription Services but will be able to export the Client Data using its admin Account for as long as the Client has an active Salesforce org.

16. Impact of 'Impellam model' on licensing terms

- It doesn't look like a sub-licensing arrangement although it would seem that Impellam and other agency clients are essentially using the Subscription Services to provide services to third parties. For this reason we have reflected this in the main licence terms in Clause 4 of the general Ts&Cs:
  - Sirenum hereby grants to the Client a worldwide, non-exclusive, non-transferable licence to use the Platform and Subscription Services by means of a Supported Web Browser in accordance with the Documentation during the Subscription Term for the following purposes:
    - if the Client is contracting with Sirenum under the Agreement in its capacity as an employment agency, for the business purposes of the Client [and its Affiliates] of providing human resources management services to its [and its Affiliates'] clients;

    - if the Client is contracting with Sirenum under the Agreement in its capacity as an employer, for the internal human resources management purposes of the Client [and its Affiliates].

    - We've also tweaked the general prohibition on using the Subscription Services to provide services to third parties in Clause 4.5.3 as follows: "the Client must not use the Subscription Services to provide services to third parties except to the extent permitted under Clause **Error! Reference source not found.**".

    - However the prohibition on sub-licensing the Client's right to access and use the Subscription Services remains in Clause 4.5.1.

17. Breaches caused by Users:

- 4.12.The Client shall be responsible for ensuring that all Users comply with the Documentation and the Terms and Conditions in connection with their access to and use of the Subscription Services and shall be liable to Sirenum for the acts and omissions of the Users and Permitted Client Affiliate Users in connection with their access to and use of the Subscription Services.

- 4.4.3.Accounts must not be shared or used by more than one individual User, provided that the Client may reassign User Accounts to new Users replacing former Users who no longer need to use the Subscription Services by using the Salesforce user management tools; the Client will be solely responsible for any User act or omission carried out through any Account and Sirenum will have no liability for any security breach which occurs as a result of such act or omission.

18. Upgrades

- Please see paragraph 2 of the SLA agreement which means we can upgrade without permission provided we provide them with 10 business days notice.
- Unless a client is using our latest version we are not obligated to provide them with support

19. **Aggregated Data**
    - We have included new wording in the IP clause as follows:
    - 11.2.Client acknowledges and agrees that Sirenum may compile anonymous Aggregated Data. To the extent necessary, Client hereby grants Sirenum a royalty-free, nonexclusive, irrevocable, right and license (with the right to sublicense) to develop anonymous Aggregated Data. Aggregated Data, once developed will be owned by Sirenum and will comprise Sirenum's Confidential Information and may be used by Sirenum for its own business purposes, including monitoring and improving its products, services or to provide new and/or customized services or technologies to its customers.

20. **Third Party Software Responsibility:**
    - Clause 3.1(c) states that Sirenum will not be responsible for products or services provided by specified third parties, including Third Party Content. I cannot find definition of Third Party Content and "specified third parties" is not defined. Sirenum could rely on this clause in relation to 3B forms (for example).
    - Clause 9.2 states that "unless Client opts out of the related Services provided by Third Parties, Sirenum is not responsible for any content or information transmitted by Third Parties, or liable for any reliance that the Client may make upon the information or statements conveyed by Third Parties".
    - To limit liability, the best way forward is to deal with this at renewal – ie descope 3B forms from the service.
    - 20.4.2 – Sirenum is not liable for any failure or delay caused by the product or services made available by Sirenum in the course of the Subsription Services which originates from any Third Party Provider;

21. **End of year retrospective invoice**
    - Clause 12.3 states that at the end of the year we will invoice the client if there has been over usage over the 12 months.
    - This has no bearing on the renewal price or what they have to pay for the subsequent year and is still applicable if they do not renew
    - We can do this at any time but I think it makes sense to do this at the end of the year

22. **SF updates**
    - Customer is responsible for applying updates – they need to carry out any actions required under notifications received by Salesforce – Clause 2.9 and 4 of the SLA doc

23. **Additional SLA items**
    - Clause 3.6 states that we can close a case within 3 business days if no reply and we are not liable for SLA once reopened
    - Paragraph 4 limitation of the number of cases that a client can rase in the SLA document
    - Clause 7.2 of T&C states we can suspend support if invoices are left unpaid for more than 30 days after due date – we need to give 30 days written notice that this will happen