CRESYM
SERVICE AGREEMENT

"ASSETS SUPPORT SERVICES"

BETWEEN:

- **CRESYM**, an international non-profit association (AISBL), incorporated under the laws of Belgium under number 0790 603 745, with its registered office at Multiburo, Square de Meeûs 38-40 1000 Brussels (Belgium), and represented by Sébastien LEPY, as General Manager.

  Hereinafter "**CRESYM**";

- Any organisation or natural person interacting with CRESYM with respect to one Asset, claiming to benefit from the "Distribution" Service that CRESYM offers for the Asset.

  Hereinafter the **User** or the **Client**;

Each referred to as a **Party** or collectively as a **Parties**.

WHEREAS

A. CRESYM is an association of research centres and industry players aiming at fostering R&D with respect to energy system modelling and simulation, delivering and maintaining opensource assets, available to researchers and business.

B. CRESYM makes available for every Asset a series of supporting **Services**, as stated in its related **AToR** among those described in Appendix 1.

C. Every Asset User must agree with the Asset Terms of Reference prior to accessing the Asset and is informed of the present Service terms of use.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

.../...

GENERIC TERMS & CONDITIONS

1. Definitions

1.1.   **Agreement** means the present document including any Appendix attached thereto.

1.2.   **Appendix** means any appendix that is attached to the main body of this Agreement when it is initially signed, as well as any additional document that is approved as Appendix in application of Article 3.3. Every Appendix forms an integral part of the Agreement.

1.3.   **Confidential information** means any Information transmitted by the Parties in the framework of the Agreement that the issuing Party explicitly ask the other Party to consider, and handle, as confidential.

1.4.   **Defined terms or expressions** means all terms and expressions starting with a capital letter in this Agreement, that are listed, and with the meaning given to them, in the present Section, unless the context necessarily requires otherwise.

1.5.   **Information** means notably all data, knowledge, know-how, software, document, information regardless of the support (oral or written) and regardless of whether it is protected or not by Intellectual Property Rights.

1.6.   **Personal Data** means one or more of the following Information related to a natural person: name, surname, position, contact details.

1.7.   **Representative** means any Person authorised to represent a Party.

1.8.   **Service** means the undertaking depicted in Appendix 1 and the delivery of all the there-listed outcomes.

2. Objectives

2.1.   **Goal**. The present Agreement defines the terms and conditions under which (i) CRESYM shall undertake the **Service** described in Appendix 1 and deliver to the Client all outcomes there listed; and (ii) the Client shall reward CRESYM for it.

3. Mission undertaking & results delivery

3.1.   **Initial assessment**. The Client approves the Service description and conditions in Appendix 1.

3.2.   **Updates**. The Parties may both agree on updates to the Service specifications and assessment during the implementation of the Agreement.

Any such update must be explicitly validated by the Client prior, and in order, to become an Appendix to this Agreement.

3.3.   **Lots**. The specifications and/or assessment identify one (or more) sub-tasks of the Service, each with a deliverable and each with a delivery deadline.

Updates appended to the Agreement (see §3.3) may add, amend or abort previously defined deliverables.

3.4.   **Monitoring**. CRESYM and the Client inform each other in writing (in particular by email) of any significant event relating to the progress of the Service, easing or jeopardising it.

All decisions made must be tracked in writing so that they may enter a new Appendix.

3.5.   **Acceptance**. The Client shall provide CRESYM with a dully justified written notice of any argued non-compliance of the provided Service with the applicable requirements, as defined in the relevant Appendix. In the lack of such notice five (5) business days following the delivery of the relevant Service, the Service shall be deemed accepted by the Client as compliant with applicable requirements.

In case of notification of shortcomings in due time, the Parties shall agree on an action plan to remedy any undisputed non-compliance within a reasonable time. If the Parties fail to agree on remedial action plan or on the argued non-compliances, the dispute resolution provision shall apply.

3.6. **No subcontracting**. CRESYM is prohibited from subcontracting the implementation of the present Agreement, or even part of it, to any third-party without the prior, express and written consent of the Client.

CRESYM remains responsible for the Agreement performance, notwithstanding the subcontracting of the Tasks.

3.7. **No transfer**. A Party shall not assign, transfer or otherwise cede any of their rights and obligations this Agreement, without the prior, express and written consent of the other Party.

Assignment, transfer or cession by means of merger, split-off or other corporate transaction and assignment, transfer or cession to affiliate companies as defined by law is not subject to the approval of the other Party but is however subject to an information notice sent within thirty (30) Business Days from such assignment, transfer or cession.

This Agreement and the rights and obligations which arise hereunder, can be transferred by a Party to any entity which succeeds it in accordance with the applicable laws and regulations, subject only to notification to all other Party. From the time of such transfer, the assignee assumes the full rights and obligations of the Party under this Agreement.

3.8. **Representatives**. CRESYM procures that each and every of its Representatives involved or implied by the implementation of this Agreement, complies with the present Agreement provisions.

3.9. **Insurance**. CRESYM procures the appropriate insurance to cover all usual risks attached to implementation of the Agreement.

4. Financial provisions

4.1. **Price**. The Service price, with as the case may be all its defining parameters, is described in Appendix 1.

All amounts shall be expressed in Euro (€).

4.2. **Invoicing**. CRESYM shall invoice the Client after reception and validation by the Client of the Service deliverables, according to the schedule in Appendix 1.

The invoice shall display its reference number, issue date, period of performance, payment term; as well as the full name, address and VAT number of the Client:

The invoice shall also display the currency, tax rate and tax amount separately, the invoiced amount exc. taxes and incl. taxes, and, where applicable, reference to the reverse charge (according to Article 196 from the Directive of Council 2006/112/EC – tax payable by customer).

4.3. **Payment term**. Payments are due on reception of the invoice, or no later than thirty (30) business days after the invoice date, provided that the invoice complies with all applicable legal requirements.

4.4. **Late Payment**. The minimum legal penalty applicable in Belgium shall apply for late payments.

If the agreement is concluded with a natural person, all invoices are payable in full and without discount. Any invoice not paid on the due date will, after a reminder has been sent and a period of fourteen calendar days has elapsed, starting on the third working day following the day on which the reminder is sent on paper or on the calendar day following the day on which the reminder is sent electronically, be subject to the following charges interest on arrears at the key rate plus eight percentage points referred to in article 5, paragraph 2, of the "Loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales", from the calendar day following the day on which the reminder is sent, and a flat-rate penalty of:

- 20 euros if the outstanding amount is less than or equal to 150 euros;

- 30 euros plus 10% of the amount due between 150.01 and 500 euros if the outstanding amount is between 150.01 and 500 euros;

- 65 euros plus 5% of the amount owed on the instalment over 500 euros, up to a maximum of 2,000 euros if the outstanding amount is over 500 euros.

In the event that the Client fails to comply within the time limit and after formal notice, CRESYM may suspend its services provided that this suspension does not result in any harmful consequences for the Client.

4.5. **Wire transfer**. Every payment shall be made through bank wire transfer to the bank account mentioned on invoice.

5. Confidentiality

5.1. **Agreement**. The existence of this Agreement is not confidential and the Parties may freely assert its existence. The content of the Agreement however is confidential.

5.2. **Scope**. Except in the case of otherwise public Information, the Parties shall consider confidential any Information transmitted by the respective other Party which is classified as confidential.

5.3. **Protection**. Unless it meets a legal obligation, the Information otherwise becomes public, or the obligation of confidentiality is waived by the respective disclosing Party, the receiving Party commits to take reasonable and necessary measures to prevent the disclosure of confidential Information.

5.4. **Breach**. In the event of a breach of confidentiality, the respective receiving Party must notify the disclosing Party as soon as possible and implement any useful measure to prevent further disclosure.

No proof of special damages shall be necessary for the enforcement of the present provision.

5.5. **GDPR**. Personal Data relating to any Party Representative are processed by the other Party in accordance with the European General Data Protection Regulation (GDPR) and any applicable implementation national data protection laws for the needs of the performance of present Agreement, its follow-up by both Parties and contacts between the Parties' relevant staff as required for the performance of the present Agreement.

Personal Data relating to the other Party staff can also be processed by each Party based on its legitimate interest to run its usual business, especially for security reasons and to prevent fraud. Where strictly necessary, the Personal Data relating to the other Party staff may be communicated to third parties (public administrations, accountants, shareholders of the Client or members of CRESYM) to comply with legal obligations.

The Personal Data relating to the other Party staff shall be stored for no longer than ten (10) years after the termination of the Agreement.

Any transfer of Personal Data relating to the other Party staff outside of the European Union is subject to the strict compliance with the requirements set forth in the GDPR, i.e. implementation of all appropriate measures through the signature of a contract with the recipient, based on the standard clauses edited by the European Commission (this contract being available for review at the head office of the concerned Party).

For any GDPR related enquiry, each Party can be contacted as indicated in Article 12.

Each Party or its staff may (upon request dated and signed sent by email to the other Party with the proof of the data subject identity) obtain, free of charge if it is a reasonable volume, the written communication of processed Personal Data and the portability of the data, as well as, where appropriate, rectification, restriction of processing, deletion of those which are inaccurate, incomplete or irrelevant. The application is considered as dismisses where no action has been taken on the application within thirty (30) days of the request. One may apply to or lodge a complaint with the Belgian Data Protection Authority (Rue de la presse 35, 1000 Brussels – contact@apd-gba.be - Tel. + 32 2 213 85 40) for the exercise of these rights.

6. Intellectual Property

6.1. **Initial IPRs**. Apart from the deliverables of the Service (see below), by default and unless another writing is applied between the Parties, the Information exchanged under the Agreement remains the property of its author.

6.2. **Mutal minimal licensing**. The Client grants CRESYM a license to use the IPRs on the Client's materials which are necessary to provide the requested Service, for the duration of the Agreement.

Similarly and subject to prior full payment of the applicable price, CRESYM shall grant the Client a non-exclusive license to use the Service and the provided deliverables within the limits of the Agreement.

7. Liabilities

7.1. **Principle**. Each of the Parties will be responsible for the proper performance of the obligations incumbent on it.

7.2. **Mutual information**. Each of the Parties therefore undertakes to notify the other without delay of any delay or failure in the performance of the Agreement, in particular the performance of the Service.

7.3. **Update**. Every Party must keep the other Party informed of any update in their respective administrative details.

7.4. **Insurance**. CRESYM undertakes to take out professional insurance to cover all body injury and material damage that may harm others, and in particular the Client, its employees or contractors.

7.5. **Service provider**. CRESYM will only be liable for direct damage caused to the Client resulting from his fault or negligence while undertaking the Service.

The liability cap of CRESYM is in any case limited to a maximum of twenty thousand euros (Eur 20.000) per individual violation and a maximum limit of one hundred thousand euros (Eur 100.000) over the entire Agreement duration.

7.6. **Client**. The Client assumes full responsibility for the use he makes of the deliverable(s) of the Service at the end of the Service.

7.7. **Force majeure.** A Party not liable for any direct and indirect consequence for the implementation of the present Agreement, in case of an event of Force Majeure (to be construed as per the applicable law).

The Party invoking a Force Majeure event shall notify the other as soon as reasonably possible, such notice describing the nature of the respective event and its probable duration.

Every Party shall make any reasonable efforts to limit the consequences and duration of such event.

After the Force Majeure event is over, every Party shall make any reasonable efforts to resume the application of this Agreement.

In case the event of Force Majeure is lasting more than three (3) months, Parties may decide to terminate the Agreement, without any kind of compensation for the Parties.

8. Duration

8.1. **Beginning date**. This Agreement enters into force on the date of its signature by the Parties.

8.2. **End date**. This Agreement ends at either of the following dates:

- (i) with the reception and validation by the Client of the last due deliverable;

- (ii) earlier, as the case may be, by the signature by both Parties of another superseding agreement; or

- (iii) earlier, at a mutually decided date, if both Parties agree to terminate the Agreement before the reception and validation by the Client of the last due deliverable;

- (iv) no later than two (2) months after CRESYM's delivery of the last due deliverable, in case the Client has not validated it in the meantime.

8.3. **Breach.** In the event of a breach by one of the Parties of its obligations under this Agreement, the other Party (issuer) reserves the right to notify this breach, in a reasoned manner and with acknowledgment of receipt, as well as its willingness to suspend the performance of its obligations or terminate the Agreement early in case the breach is not remedied within thirty (30) days from such written notice.

Notification of a breach suspends the obligations of the issuer until it is acknowledged by the other Party.

If the breach is not remedied in due time, the Party which notified the breach may terminate the Agreement or suspend the performance of its own obligations, without prejudice to any possible claim to compensate suffered damages.

8.4. **Confidentiality, ex post**. The obligation to preserve Confidential Information shall remain in force for a period of three (3) years, or as long as CRESYM must know that is must be kept confidential, following the end of this Agreement for any reason.

8.5. **IPR, ex post**. The obligation to protect the intellectual property rights generated in application of this Agreement last for the legal duration of such intellectual property rights.

9. Notice

9.1. **Notice**. Any notice under this Agreement or in connection to it shall be made in writing, addressed to the Party to be notified based on the contact details specified in Appendix 1, or any update as may be later designated in writing.

Notices shall be given either by registered mail or by e-mail (with acknowledgement of receipt).

10. Language, applicable law, dispute

10.1. **Language**. This Agreement and all documents exchanged in application of this Agreement must be in English or translated in English in order to be considered valid.

10.2. **Governing Law**. This Agreement shall be exclusively governed by, and construed and enforced in accordance with, the laws of the Kingdom of Belgium, without giving effect to its conflict of law provisions and/or principles.

10.3. **Amicable settlement**. Any and all claims, controversies or disputes or disagreement between the Parties arising out of, connected with, or relating in any way to this Agreement, its existence, negotiation, (non-) performance, interpretation, termination or the relationship between the Parties established hereby shall be settled amicably between the Parties.

10.4. **Jurisdiction**. In the event the dispute remains unresolved within a period of one (1) month following the date of written notification the dispute may be settled by the competent Brussels' court.

11. Final Provisions

11.1. **Prevalence**. The provisions in Appendix 1 complement, and, where applicable cancel and supersede, the corresponding provisions of the present "General Terms and Conditions".

11.2. **Comprehensiveness**. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter, every update of which both Parties agree to add as new Appendix to the present Agreement in application of Article 3.2.

11.3. **Severability**. Should any one or more of the provisions contained in this Agreement for any reason be held by a court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such invalid, illegal or unenforceable provision (or provisions) shall be reformed and construed so that it (or they) will be valid, legal and enforceable to the maximum extent permitted by law.

11.4. **No Partnership**. This Agreement does not create any partnership, joint venture, or agency of any kind, between the Parties and none of the terms or provisions of this Agreement shall be interpreted as creating any such partnership, joint venture or agency. Each Party is liable for its own commitments only. The Parties do not assume joint and several liability.

11.5. **No Employment**. This Agreement does not create an employment relationship between a Party and/or any individual involved by its implementation.

Nothing in this Agreement shall be construed or have the effect of giving rise to a relationship of employer and employee between any Party.

11.6. **No waiver**. No failure or delay by a Party hereto in exercising any right, power, privilege or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, privilege or remedy hereunder.

11.7. **Use of electronic means**. The Parties acknowledge and agrees that their electronic exchanges (emails, SMS, etc.) have the same value as any other written material and that their content is deemed genuine unless the evidence of a fraud is brought.

11.8. **Electronic signatures**. The Parties agree that each of them may sign the Agreement, or any related document, by affixing an electronic signature on the DocuSign platform or similar method and acknowledges that this electronic signature will have the same legal value as a handwritten signature.

The signature of the documents by electronic means in the meaning of Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market and electronic transmission (jointly, an "Electronic Signature"), including via facsimile, Docusign, or other similar method, shall have the same force and effect as an original and bind the Parties to the terms of these documents.

The Parties agree that the electronic transmission by Docusign (or other similar platform) of the electronically signed Agreement, or related document, constitutes proof between the Parties of the existence, content, sending, integrity, timestamping and receipt of the Agreement, or related document, signed electronically between the Parties; and that the Agreement, or any related document, signed electronically constitutes the original of the document, has the same probative value as a writing on paper and may validly be opposed to them; that it is prepared and will be kept under conditions likely to guarantee its integrity and that it is perfectly valid between them.

11.9. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed to be an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, THE PARTIES TO THIS AGREEMENT HAVE EXECUTED OR HAVE CAUSED THEIR DULY AUTHORIZED REPRESENTATIVES TO EXECUTE THIS AGREEMENT ON THEIR BEHALF AS OF THE EFFECTIVE DATE.

…/…

SPECIFIC TERMS AND CONDITIONS

12.Appendix 1: CRESYM's commercial proposal

Services description

12.1. **Service S1 – promotion**. CRESYM promotes and advertises the Asset, that is: i/ lists it on its CReDIT web portal, as one of CRESYM's "assets"; ii/ relates it appropriately, wherever relevant, to other "assets" and external resources (especially though html links).

12.2. **Service S2 – source management**. CRESYM hosts & maintains the Asset source on its servers or cloud spaces, that is:

- Hosts the Asset source on its own github repository, or equivalent framework.

- Defines the asset management guidelines (e.g. decisions about git versioning).

- Manages the Asset updates according to the said guidelines.

12.3. **Service S3 – active instance**. CRESYM:

- Makes a compiled, working instance of the Asset available (the "**Active instance**").

- Manages, updates, and maintains up to date, according to the latest safety and versioning standards, all IT libraries and environments required for the Asset to be installed and run with optimal performances.

- Whenever needed, updates the Asset source code and compile a new active instance, to match evolutions of the Requirements.

Updates of the hosting environment are due and performed every month.

12.4. **Service S4 – distribution**. CRESYM makes the Asset publicly available, that is:

- Makes the Asset source hosting space publicly accessible, with its AToR and related documentation pieces.

- When applicable, makes the Asset active instance space publicly accessible and make a link to it from the source hosting space (see "Active Instance").

- Fosters a community spirit among all Asset Users on a best effort basis (the "**Asset community**").

- Supports the organisation of the Asset community.

- Among & with the community, contributes to develop and maintain a didactic introduction to the Asset to emphasise its main features, according to the related common methodology.

- When applicable, supports the Asset community and Asset Owner, in upgrading the Asset.

12.5. **Service S5 – helpdesk**. CRESYM makes a hotline support to its Clients about the Asset.

CRESYM is available to receive **Tickets**: The helpdesk shall be notified in written, normally via the github dedicated form, or alternatively, by sending an email to helpdesk@cresym.eu.

CRESYM commits to reply to an incoming Ticket within twenty-four (24) hours (except weekends and bank holidays) and to seek the satisfaction of the Client.

If solving the matter raised in the Ticket requires human work for more than one (1) hour, CRESYM will assess the required work and such works will be undertaken subject to resources availability[1]. CRESYM may submit a funding proposal to the Client if appropriate.

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[1] With respect to software debugging, CRESYM will at least diagnose the issue and may, for purely IT corrections matters (i.e. respecting the software pre-defined logic), implement corrections.
Regarding matters requiring to alter the software logic or essence, the Asset community will be called for help.

12.6. **Service S6 – software upgrade**. One (or more) User(s) can enter into a dedicated, specific service agreement with CRESYM, requiring CRESYM to develop the Asset's goals, scope and functionalities.

Prior to signing such dedicated service agreement, CRESYM shall inform the Asset Community about the development specifications as an issue on the Asset github repository.

12.7. **Service S7 – debugging**. When a flaw about its performance compared to its public specifications is identified (e.g. running time issues and coding errors are at stake), CRESYM:

- Ensures the flaw is reported publicly as an issue on the Asset github repository.

- Ensures that a complete diagnosis and remedial action is provided publicly on the Asset github repository.

- On a best effort basis, implements the remedial actions, or ensures that the remedial actions are implemented properly and versioned, by and under the supervision of the Asset community.

The remedial action shall preserve the software goals, scope and functionalities, and documented methodology as they used to be.

Flaw corrections altering the Asset's goals, or scope, or methodology can happen only in the framework of a "Software Upgrade" dedicated agreement and under the supervision of the Asset community.

12.8. **Service S8 – software installation setup**. CRESYM proposes a support service the Asset installation wizard and/or setup support to Users.

12.9. **Service S9 – documentation**. One (or more) User(s) can enter into a dedicated, specific service agreement with CRESYM, requiring CRESYM to develop documentation items for the Asset.

12.10. **Service S10 – training**. One (or more) User(s) can enter into a dedicated, specific service agreement with CRESYM, requiring CRESYM to develop training for Users about the Asset implementation or development.

One (or more) User(s) can enter into a dedicated, specific service agreement with CRESYM to benefit from any available training about the Asset.

12.11. **Service S11 – studies**. One (or more) User(s) can enter into a dedicated, specific service agreement with CRESYM, requiring CRESYM to use the Asset and supply the outcomes to the requesters.

12.12. **Service S12 – computations means**. CRESYM provides dedicated computations means to run the Asset (CPU, storage, specific environments, etc…).

Common conditions to all Services

12.13. **AToR**. Every Asset Terms of Reference (ATOR) lists explicitly which, among the above Services, depicted in Article 12.1 to 12.12, is available from CRESYM for the concerned Asset.

12.14. **User's agreement**. The Client implicitly and automatically accepts the present terms of reference if, and when, resorting to the Service.

12.15. **Caveats**. CRESYM is not liable for troubles regarding the performance of the Service beyond the environment in its control, especially in the User's own environment and settings.

CRESYM is only liable for Asset source code updates that would stem from its own staff and contractors. CRESYM is not liable for troubles to the performance of the Service caused by its suppliers, especially the git source management (to date: "Github").

In case the Asset source is damaged, the latest safe version according to the git versioning will be restored. All more recent data will be archived.

12.16. **Sub-contractor**. By exception to Article **Erreur ! Source du renvoi introuvable.**, CRESYM reserves the right to involve sub-contractors.

12.17. **Tariff**. Services S1, S2, S3, S4, S5, S8 are free of charge for every User.

"S6 - software upgrade" will be charged at a negotiated rate to the requiring Client(s).

CRESYM reserve the right to call for a sponsor to implement "S7 – debugging" actions at a negotiated tariff.

12.18. **Specific definitions**. The following definitions apply:

- **Asset** means the software tool or prototype that CRESYM has made available to the Client via www.cresym.eu/CReDIT, that the Client has approved the terms of reference of, and that the Client refer to when resorting to the Service.

- **Asset community** means all users that accessed, and interact with and about, the Asset.

- **Asset Terms of Reference** (or **AToR**) means conditions that the Client must have approved before gaining access to the Asset.

- **Ticket** means one piece of support solicitation, starting with an email from the Client to helpdesk@cresym.eu and ending with the common understanding of both Parties that the matter is solved or cannot be resolved in the framework of the Service.

End of the document