

These terms and conditions are between Innovise Software and Solutions Limited (**Innovise**) and the customer detailed in the quote between the parties (**Customer**).

AGREED TERMS

1. INTERPRETATION

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

Authorised Devices: those devices which are authorised by this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation in accordance with this agreement.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5.

Customer Data: the data inputted by the Customer, Authorised Users, or Innovise on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Device Subscriptions: the device subscriptions purchased by the Customer as set out in the Quote which entitle Authorised Devices to access and use the Services in accordance with this agreement.

Documentation: the user manual and release notes issued by Innovise from time to time.

Effective Date: the date of this agreement.

Initial Subscription Term: twelve months.

Normal Business Hours: 8.00 am to 5.00 pm local UK time, each Business Day.

Quote: the quote supplied by Innovise and accepted by the Customer and Innovise and as amended from time to time.

Services: the subscription services provided by Innovise to the Customer under this agreement via the designated web address or any other website notified to the Customer by Innovise from time to time, as more particularly described in the Documentation.

Software: the online and device based software applications provided by Innovise as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to Innovise for the User or Device Subscriptions, as set out in the Quote.

Subscription Term: has the meaning given in clause 13.1.

Support Services Policy: as attached to this Agreement.

User Subscriptions: the user subscriptions purchased by the Customer as set out in the Quote which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or

network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. USER / DEVICE SUBSCRIPTIONS

2.1 Subject to the Customer purchasing the User / Device Subscriptions as set out in the Quote, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Innovise hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users / Devices to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users / Devices, the Customer undertakes that:

- (a) the maximum number of Authorised Users / Devices that it authorises to access and use the Services and the Documentation shall not exceed the number of User / Device Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User / Device Subscription to be used by more than one individual Authorised User / Device unless it has been reassigned in its entirety to another individual Authorised User / Device, in which case the prior Authorised User / Device shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that appropriate password policies (including frequency of change) will be applied and that each Authorised User shall keep his password confidential;
- (d) it shall permit Innovise to audit the Services in order to establish the name and password of each Authorised User and the number of Authorised Devices. Such audit may be conducted no more than once per year, at Innovise's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) if any of the audits referred to in clause 2.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Innovise's other rights, the Customer shall promptly disable such passwords and Innovise shall not issue any new passwords to any such individual; and
- (f) if any of the audits referred to in clause 2.2(d) reveal that the Customer has underpaid Subscription Fees to Innovise, the Customer shall pay to Innovise an amount equal to such underpayment as calculated in accordance with the prices stipulated by Innovise within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property;

and Innovise reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide a bureau service to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Innovise.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless expressly authorised within the Quote.

3. ADDITIONAL USER / DEVICE SUBSCRIPTIONS

3.1 The Customer may, from time to time during any Subscription Term, purchase additional User / Device Subscriptions in excess of the number originally purchased

and Innovise shall grant access to the Services and the Documentation to such additional Authorised Users / Devices in accordance with the provisions of this agreement.

- 3.2 If Innovise approves the Customer's request to purchase additional User / Device Subscriptions, the Customer shall, within 30 days of the date of Innovise's invoice, pay to Innovise the relevant fees for such additional User / Device Subscriptions.

4. SERVICES

- 4.1 Innovise shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

- 4.2 Innovise shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of Saturdays and Sundays; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that Innovise has used reasonable endeavours to give the Customer reasonable notice in advance.

- 4.3 Innovise will, as part of the Services and at no additional cost to the Customer, provide the Customer with Innovise's standard customer support services during Normal Business Hours in accordance with Innovise's Support Services Policy in effect at the time that the Services are provided. Innovise may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Innovise's then current rates.

5. CUSTOMER DATA

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 5.2 If Innovise processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Innovise shall be a data processor and in any such case:

- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Innovise so that Innovise may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
- (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

- (c) Innovise shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
- (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. INNOVISE'S OBLIGATIONS

6.1 Innovise undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Innovise's instructions, or modification or alteration of the Services by any party other than Innovise or Innovise's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Innovise will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Innovise:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide Innovise with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by Innovise;in order to render the Services, including but not limited to Customer Data, security access information and configuration information;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Innovise may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users / Devices use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Innovise, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Innovise from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Innovise's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Subscription Fees to Innovise for the User / Device Subscriptions as set out in the Quote.
- 8.2 The Customer shall on the Effective Date provide to Innovise approved purchase order information acceptable to Innovise and any other relevant valid, up-to-date and complete contact and billing details and Innovise shall invoice the Customer on a recurring basis as stipulated in the Quote and the Customer shall pay each invoice prior to the date of the commencement of the applicable payment period.
- 8.3 If Innovise has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Innovise:
- (a) Innovise may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Innovise shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC PLC at the date the relevant invoice was issued (or the maximum permitted by law), commencing on the due date and continuing until fully paid, whether before or after judgment and Innovise shall be entitled to reclaim associated debt recovery costs.
- 8.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to Innovise's invoice(s) at the appropriate rate.
- 8.5 Innovise shall be entitled to increase the Subscription Fees and the fees payable in respect of any additional User / Device Subscriptions purchased upon 90 days' prior notice to the Customer.

9. PROPRIETARY RIGHTS

The Customer acknowledges and agrees that Innovise and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10. CONFIDENTIALITY

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, also constitute Innovise's Confidential Information.

10.6 Innovise acknowledges that the Customer Data is the Confidential Information of the Customer.

10.7 This clause 10 shall survive termination of this agreement, however arising.

11. INDEMNITY

- 11.1 The Customer shall defend, indemnify and hold harmless Innovise against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) Innovise provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 Innovise shall, subject to clause 11.5, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Innovise is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to Innovise in the defence and settlement of such claim, at Innovise's expense; and
 - (c) Innovise is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, Innovise may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on five Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall Innovise, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Innovise; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Innovise; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Innovise or any appropriate authority.
- 11.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Innovise's (including Innovise's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. LIMITATION OF LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of Innovise (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this agreement;
- (b) any use made by the Customer of the Services and Documentation or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

12.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Innovise shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Innovise by the Customer in connection with the Services, or any actions taken by Innovise at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.3 Nothing in this agreement excludes the liability of Innovise:

- (a) for death or personal injury caused by Innovise's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.4 Subject to clauses 12.2, 12.3 and 12.5:

- (a) Innovise shall not be liable for the following losses suffered by the Customer arising out of or in connection with this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, even if such losses result from Innovise's deliberate personal repudiatory breach of this agreement: (i) loss of income; (ii) loss of business profits or contracts; (iii) business interruption; (iv) loss of the use of money or anticipated savings; (v) loss of information; (vi) loss of opportunity, goodwill or reputation; (vii) loss of, damage to or corruption of data; or (viii) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise; and
- (b) Innovise's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to 125% of the total Subscription Fees paid for the User / Device Subscriptions (excluding any amounts included in the Subscription Fees which relate to any third party costs and software) during the 12 months immediately preceding the date on which the claim arose.

12.5 Innovise shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for the performance of any third party products or services which are used in the performance of the Services.

13. TERM AND TERMINATION

13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed (“**Renewal Period**”), unless:

- (a) either party notifies the other party of termination , in writing, at least 90 days before the end of the Initial Subscription Term or during the Renewal Period, in which case this agreement shall terminate upon the expiry of the Initial Subscription Term or expiry of the notice given during the Renewal Period, as applicable; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with the Renewal Period shall constitute the **Subscription Term**.

13.2 The Customer may amend the Services provided under this agreement by giving not less than ninety days’ written notice of amendment (in which case the terms of this agreement shall remain in force in respect of the remaining Services).

13.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) any amounts due from the Customer shall become immediately payable including, in the event that Innovise has terminated this agreement because of a default by the Customer as set out in sub-clauses 13.2(a)-(g) above, the amount payable in respect of the notice period as set out in clause 13.1(a) above;
- (c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (d) Innovise may destroy or otherwise dispose of any of the Customer Data in its possession unless Innovise receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Innovise shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Innovise in returning or disposing of Customer Data; and
- (e) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. FORCE MAJEURE

Innovise shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Innovise or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, natural disaster, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. WAIVER

- 15.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. ENTIRE AGREEMENT

- 17.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

18. ASSIGNMENT

The Customer shall not, without the prior written consent of Innovise, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. NOTICES

- 21.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for

such purposes. Notices for Innovise shall be addressed to the Chief Executive Officer.

21.2 A notice delivered by recorded delivery post, shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

22. GOVERNING LAW AND JURISDICTION

22.1 If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

22.2 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

22.3 The parties irrevocably agree that the courts of England 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).

SUPPORT SERVICES POLICY

1.0. Provision of Support Services

Innovise shall provide a telephone based Help-Desk for technical support for users of the Services, which shall be available during Normal Business Hours. To include: helpdesk telephone support and updates to Services; access to 24 hour web based Customer Call tracking system; on site cover during office hours charged on a per visit basis at standard daily rates plus expenses.

Upon receipt of a support request from the Customer, Innovise shall carry out diagnosis remotely by telephone or remote access link making all findings of such diagnosis available to the Customer. Where remote diagnosis fails to resolve the fault, Innovise shall take all reasonable efforts to provide on-site assistance to resume normal working, subject to acceptance of the costs as outlined in clause 2.0 of this schedule.

Where calls relate to the interface to other software packages or environments, or similar issues where the fault cannot be diagnosed as being clearly caused by the supported Services, Innovise will use its best endeavours to assist the Customer in finding a resolution to the problem, subject to the acceptance by the Customer of the additional charges to be levied, as outlined in clause 2.0 of this Appendix.

Innovise also operates an emergency service where a Critical Failure (as defined below) has been logged. This is available 365 days a year and 24 hours per day. Innovise will use its reasonable endeavours to respond in such a situation and gives no assurances as to resolution times.

In the event of a support request of an emergency nature which is not classed as a Critical Failure by Innovise, the additional charges listed in clause 2.0 below shall apply.

2.0 Additional Charges

Innovise will levy additional charges in the following cases as outlined below (where "Out of Hours" is defined as all times other than Normal Business Hours):

- Telephone/Remote Diagnostic management of Out-of-Hours incidents relating to the Innovise Services at a initial charge of £100 plus £50 per hour or part hour spent responding to the incident.
- Telephone/Remote Diagnostic management of Normal Business Hours incidents relating to non-Innovise products or services at an initial charge of £50 plus £50 per hour or part hour spent responding to the incident.
- Telephone/Remote Diagnostic management of Out-of Hours incidents relating to non-Innovise products or services at an initial charge of £100 plus £100 per hour or part hour spent responding to the incident.
- On-site Normal Business Hours support will be charged at the Standard Daily Rate, plus expenses. Out of Hours On-Site support will be negotiated on a case by case basis.
- Incidents relating to the training needs of inexperienced operators will be charged at an initial charge of £50 plus £50 per hour or part hour responding to the request during Normal Business Hours and £100 Plus £100/Hour at other times.

3.0 Customer Case Logging

Customer must report all Services faults, giving them a priority (rated 1 through to 5) and will receive an immediate call logging number from Innovise. The following definitions of priorities shall apply:

1. **Critical Failure.** Where a fault materially affects performance and/or functionality and/or ability of the Services to perform its task and which in part or completely prevents the Customer from trading.
2. **Serious Failure.** Where a fault materially affects performance and/or functionality and/or ability of the Services to perform its task and which seriously impacts on the Customer's trading and business.
3. **Intermediate failure.** Where a fault materially affects performance and/or functionality and/or ability of the Services to perform its task but does not prevent the Customer from using the Services for the purposes specified.
4. **Low Impact Failure.** Where a fault has little material effect on the performance and/or functionality and/or ability of the Services to perform its task.
5. **Minor bug or Enhancement Request.** Where a fault has no material effect on the performance and/or functionality and/or ability of the Services to perform its task.

The Customer must also maintain procedures for logging the time and information concerning any particular failure of the Services for the purposes of assisting Innovise in responding to a support call.

4.0 Innovise Access

The Customer must provide Innovise with remote access to hardware and software together with access to such of the Customer's information and facilities which may be necessary to assist in effecting the provision of the support and Services.

5.0 User Training

The Customer must ensure that all users of the Services are trained to an acceptable standard of competence, and if a high level of support calls are received from inexperienced operators Innovise may make additional charges as outlined in clause 2.0 of this schedule.

6.0 Innovise Response and Obligations for Support

Innovise will use reasonable commercial endeavours to respond to calls for support promptly: we aim to respond to all faults by remote means within one hour of logging for all faults logged as 1 or 2, within 24 hours for all faults logged as 3 or 4, and within 72 hours for faults logged as 5. Innovise will provide prompt updates during the course of such calls one an initial response has taken place.

Where required, a site visit will be arranged within 24 hours of a fault rated as 1, 2 or 3, and within 72 hours for all other faults.

No guarantee or warranty is given of any times for response or that Innovise will be able to rectify the problem within a particular time scale. Innovise's obligation to provide the Services is conditional upon the proper use of the Services and Innovise shall be under no obligation to provide the Services where failure is due to any of the following:

- Improper use, neglect or accident in respect of the Services;
- Modifications, alterations or repairs or error correction carried out to the Services other than by Innovise or with Innovise's prior written approval;

- Any failure due to electricity supply, inadequate cooling, fire or flood or natural disasters;
- Combination of the Services with any equipment or software programs not supplied or previously approved by Innovise.

7.0 Variation

- Innovise may from time to time vary all or part of these terms and conditions and the Subscription Fee by giving not less than ninety days' written notice to you.
- Innovise operates an online ordering system for existing customers and you hereby agree to make use of the online ordering system such that Quotes managed using the online system are subject to the terms of this agreement.
- In the event that you change the Software licensed from Innovise, the changes to support charges will take immediate effect from the date on which license key access is provided unless otherwise stated in the Quote related to the additional Software.