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## Terms and Conditions for Innovise Professional Services

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### **Abstract**

*This document forms a legal agreement between Innovise and its Customers making use of Professional Services provided by Innovise*

### **Innovise Software Ltd (“INNOVISE”)**

A division of Innovise plc  
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### Version History

Listed below is the history of this document giving a summary of the changes made against the version numbers of the document.

| Date       | Version | Description | Who         |
|------------|---------|-------------|-------------|
| 20/08/2007 | 1.0     | Created     | Mike Taylor |

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## Terms of Service

### **1. Application of the Agreement**

THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING ON CUSTOMER UPON THE SIGNING OF AN UNEXPIRED INNOVISE QUOTE AT WHICH POINT INNOVISE AGREES TO PROVIDE THE SERVICES DETAILED IN THE QUOTE AND (IF APPLICABLE) ANY RELATED DOCUMENTS SUBJECT TO THE FOLLOWING TERMS. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE USING THE SERVICES SPECIFIED IN THE QUOTE AND (IF APPLICABLE) ANY SUPPORTING DOCUMENTATION . IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "CUSTOMER", "ITS" "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT USE THE SERVICES AND MUST CONTACT INNOVISE TO TERMINATE YOUR CONTRACT.

### **2. Terms of Services.**

Customer acknowledges and agrees to the following terms of service.

**2.1. Customer Must Have Internet Access.** In order to use any of the Services delivered remotely or involving hosted applications (such as Servicetrac), Customer must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based content. Customer must also provide all equipment necessary to make such (and maintain such) connection to the World Wide Web.

**2.2. Accuracy Of Customer's Information.** Customer agrees to provide accurate, current and complete information ("Registration Data") about Customer as requested by INNOVISE from time to time. Customer further agrees to use commercially reasonable efforts to maintain and promptly update the Registration Data to keep it accurate, current and complete. Customer acknowledges and agrees that if Customer provides information that is intentionally inaccurate, not current or incomplete in a material way, or INNOVISE has reasonable grounds to believe that such information is untrue, inaccurate, not current or complete in a material way, INNOVISE has the right to suspend Customer's Services project.

**2.3. Email And Notices.** Customer agrees to provide INNOVISE with Customer's e-mail address, to promptly provide INNOVISE with any changes to Customer's e-mail address, and to accept emails (or other electronic communications) from INNOVISE at the e-mail address Customer specifies. Except as otherwise provided in this Agreement, Customer further agrees that INNOVISE may provide any and all notices, statements, and other communications to Customer through e-mail.

**2.4. Working Day.** INNOVISE provides all Services on a day rate basis in which a day is defined as up to seven and a half (7.5) working hours between the hours of 8am and 6pm Monday to Friday and excluding UK public holidays and the period between Christmas and New Year.

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**2.5. Travel Time.** The Services may be delivered at the Customer site and on such occasions the time taken to travel to the Customer site from the normal place of work for the INNOVISE staff member is included in the Working Day. As such, this travel time reduces any time available for the Services upon arrival. Such travel time is limited to a maximum of four (4) hours in any day. Where total (i.e. a return journey) travel time exceeds four (4) hours or the Customer wishes to maintain a full Working Day of Services, a reduced rate Travel Time day rate is available and can be purchased as an addition to the project.

**2.6. Accommodation.** The Services may be delivered at the Customer site and if this involves more than four (4) hours travel time, overnight accommodation is required and is subject to the INNOVISE expense policy.

**2.7. Expense Policy.** Unless otherwise stated on the Quote, INNOVISE will invoice Customer in advance for expenses according to the geographic zone of work carried out. INNOVISE operates a three zone expense pricing system and prices are available on request and will be incorporated in quotations where on-site work is specified.

**2.8. Payment Terms.** Unless stated otherwise on the Quote, INNOVISE will invoice all Services and expenses costs in advance and such monies are due prior to the commencement of the Services project. Unless stated otherwise on the Quote, expenses are due within ten (10) days of invoice. Customer agrees to pay promptly without demand, deduction or set-off. INNOVISE at its absolute discretion may charge interest on all late payments and debt recovery costs. Interest will be at a rate of three (3) percent above the base rate of HSBC plc or the maximum permitted by the relevant laws in effect at the time, commencing from the invoice due date.

**2.9. Customer Assistance.** Customer undertakes to provide INNOVISE and its staff (at no charge) with all necessary software, documentation, information, support and co-operation that may be reasonably required to enable INNOVISE to perform the Services. Where such Services are delivered at the Customer site, Customer further undertakes to provide INNOVISE (at no charge) adequate office accommodation, a secure work space, telephone and IT facilities including access to all relevant equipment and systems of the Customer to enable the INNOVISE staff member or sub-contractor of INNOVISE to perform the Services and fulfil all relevant obligations of this agreement.

**2.10. Health and Safety.** Customer agrees to take all reasonable steps to ensure the health and safety of INNOVISE staff and sub-contractors while they are at the Customer's site. INNOVISE undertakes to ensure its staff and sub-contractors adhere to the policies and procedures provided by the Customer while attending the Customer's site.

**2.11. Trademark Information.** INNOVISE™, the INNOVISE logo™, Servicetrac™, Servicetrac logo™, and other INNOVISE service marks, logos and product and service names are marks of INNOVISE (the

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“INNOVISE Marks”). Customer agrees not to display or use the INNOVISE Marks in any manner without the owner’s express prior written permission.

**2.12. Confidential Information.** For purposes of this Agreement, confidential information shall include the terms of this Agreement, Customer Data, and any information that is clearly identified in writing at the time of disclosure as confidential (“Confidential Information”).

Each party agrees: (a) to keep confidential all Confidential Information disclosed to it by the other party or by a third-party; (b) not to use the Confidential Information of the other party except to the extent necessary to perform its obligations hereunder; and (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information).

INNOVISE will restrict its employees’ access to Customer’s Confidential Information to only those employees necessary to successfully provide the Service. INNOVISE may disclose Confidential Information on a need-to-know basis to its contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services for INNOVISE in connection with the performance of this Agreement.

Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; or (4) the recipient becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient. This Section 2.12 will not be construed to prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority.

The parties agree to give the other party prompt notice of the receipt of any subpoena or other similar request for such disclosure.

With respect to any information received by either party from the other as a result of any other relationship between the parties other than as licensor and licensee under this Agreement (i.e., business development, partnership, alliance, etc.), the parties will abide by the terms and conditions of any Nondisclosure Agreement (or similar agreement) executed between the parties.

**2.13 Advanced Booking and Cancellation.** INNOVISE and Customer will seek to agree mutually convenient times for the delivery of the Services. Where such time is booked in advance, Customer understands that INNOVISE is required to commit its resources. Advanced bookings that are cancelled by Customer without sufficient notice will be forfeit without refund. A minimum of five (5) business days notice is required for

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Services at Customer site. A minimum of two (2) business days notice is required for Services that will be delivered remotely.

**2.14 Services Usage Period.** INNOVISE will use all reasonable commercial efforts to deliver the Services as soon as required by the Customer. However, unless stated otherwise in the Quote, such Services must be completed within 60 days of the initial signing of the Quote. Unused Services will be forfeit without refund. Customer acknowledges that it is responsible for booking all such Services in sufficient time to avoid such forfeit

**2.15 Service variation.** Any work outside of the scope of the Quote will require a specific new Quote to be issued by INNOVISE and executed by Customer

**2.16 Software Development.** If applicable, INNOVISE and Customer shall discuss the Customer's functional requirements for any Software Development. INNOVISE shall if required by a further Quote provide a form of Functional Specification. If a Functional Specification is agreed between the parties INNOVISE shall if required by a further Quote provide a technical specification and/or a prototype/a series of prototypes (as appropriate) .

The Customer undertakes to INNOVISE: (a) to ensure the software, operating system and compiler and any other software with which the Developed Software will be used is either the property of Customer or is legally licensed to Customer and to indemnify INNOVISE in respect of any claims against INNOVISE by third parties and all related costs, expenses or damages, in the event of any actual or alleged violations of third party proprietary rights or software licences; (b) to recognise that the ability of INNOVISE to successfully complete Software Development depends upon the cooperation of the Customer; (c ) to accept that the Software Development is subject to potential technical limitations if so advised by INNOVISE, having regard to the applicable Customer hardware, software, operating system, any programming language limitations and any limits on expenditure under the Quote ; (d) to create an appropriate test environment in order to satisfy itself that the Developed Software meets the needs of its business. It is the sole responsibility of Customer to determine that the Developed Software is ready for operational use in the Customer's business before it is so used.

If compliance with the Customer's designs, specifications or instructions results in INNOVISE being subject to any claim for infringement of any IPRs or any third party rights, the Customer will indemnify INNOVISE against any claims, demands, damages, costs and expenses made against or suffered by INNOVISE as a result of any such claim or action.

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Customer acknowledges that all proprietary rights in the Software, including but not limited to any title or ownership rights, patent rights, copyrights and trade secrets, will at all times and for all purposes vest and remain vested in INNOVISE.

**2.17 System Supply and Configuration** In cases where INNOVISE supplies Customer with a combination of hardware, software, third party services, implementation and configuration services, the following shall apply: (1) Customer acknowledges that the Products have not been prepared to meet the Customer's individual requirements and that it is therefore the responsibility of Customer to ensure that the facilities and functions of the same meet its requirements; (2) if Customer wishes to take advantage of the hardware manufacturer's warranty then Customer is responsible for completing the warranty documents, ensuring the level of support is satisfactory, returning the warranty documents to the manufacturer as soon as possible after delivery; and notifying INNOVISE that this has taken place. INNOVISE has no responsibility for the provision of, or terms and conditions of, any third party agreement or warranty.

**2.18 Customer Specific Software Training** Where INNOVISE delivers training for a specific customer (either remotely, at Customer Site or INNOVISE site), its training staff will use all reasonable efforts to accommodate the specific needs of Customer where those needs have been identified in advance and provided to INNOVISE not less than five (5) business days before the scheduled training session(s). Where no such needs have been expressed, INNOVISE will provide standard training using pre-prepared materials and agenda.

**2.19 Group Software Training** Where INNOVISE provides group training on a per seat attendance basis, the course material will be standardised. Customer acknowledges that this Service will not allow customized material or training on features outside of the standard course operated by INNOVISE for such Services.

### **3. Warranties.**

INNOVISE warrants that (a) it and each of its staff, consultants and sub-contractors (if any) that is used to perform and provide the Services has the necessary knowledge, skills, experience, qualifications, rights and resources to provide and perform the Services in accordance with this Agreement and (b) the Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards, laws and governmental regulations applicable to the performance of such Services.

INNOVISE DOES NOT WARRANT THAT THE PROPER PERFORMANCE OF THE SERVICES WILL PRODUCE THE OPERATIONAL BENEFIT OR COMMERCIAL RESULT EXPECTED OR DESIRED BY CUSTOMER.

Customer's sole and exclusive remedy for INNOVISE's breach of this warranty, unless caused by Negligence or wilful default, shall be that

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INNOVISE shall be required to use commercially reasonable efforts to re-perform the non-conforming elements of the Services.

INNOVISE shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material Services performance problem, and such notice must be sent to [sales@innovise.com](mailto:sales@innovise.com).

**4. Disclaimer Of Warranties.**

EXCEPT AS STATED IN SECTION 3 ABOVE (AND ANY RELEVANT WARRANTIES IN THE LICENSE AGREEMENT AND SAAS TERMS OF SERVICE), INNOVISE MAKES NO FURTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES PROVIDED TO THE CUSTOMER ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS.

**5. Limitations Of Liability.**

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH INNOVISE IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY INNOVISE OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF CUSTOMER DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), ARISING FROM BREACH OF WARRANTY OR BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

The maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any of the Services, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, shall in no case exceed the value of the relevant Services Quote.

The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of consideration levied in connection with the Services and that, were INNOVISE to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitations of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Customer.

THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 6 BELOW OR IN THE CASE OF DEATH OR PERSONAL INJURY

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CAUSED BY THE NEGLIGENCE OF INNOVISE, ITS STAFF OR ITS CONTRACTORS.

**6. Indemnification.**

**6.1. Infringement.** INNOVISE will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable legal fees) (collectively, "Losses") arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer which arise out of or result from the infringement of any copyright, patent, trademark, or misappropriation of a trade secret relating to the Services; provided that Customer (a) promptly gives INNOVISE notice of the claim, suit, action, or proceeding; (b) gives INNOVISE sole control of the defence and related settlement negotiations; and (c) provides INNOVISE with all reasonably available information and assistance necessary to perform INNOVISE's obligations under this paragraph.

If the Service is held to infringe any intellectual property right, INNOVISE may, in its sole discretion and at its own expense, either procure a license that will protect Customer against such claim without cost to Customer or replace the Services with non-infringing Services. Provided that INNOVISE complies with this Section 6.1, Customer shall have no remedy against INNOVISE, except it may at its option terminate the Agreement and receive a pro-rata refund of the license fees paid for under the Agreement for its use of the Service but which use has not yet been furnished by INNOVISE as of the date of such termination.

**6.2. Customer's Indemnity.** Customer shall defend and hold INNOVISE harmless from and against any and all Losses arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against INNOVISE which arise out of or result from a claim by a third-party (i) alleging that the Customer Data or any Trademarks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Customer's breach of Section 2.12 above, provided that INNOVISE (a) promptly provides Customer notice of the claim, suit, action, or proceeding; (b) gives Customer sole control of the defense and related settlement negotiations; and (c) provides Customer with all reasonably available information and assistance necessary to perform Customer's obligations under this paragraph.

**6.3. Survival.** The indemnification obligations contained in this Section 6 shall survive termination of this Agreement for one year.

**7. Suspension/Termination.**

**7.1. Suspension For Overdue Account.** INNOVISE reserves the right to suspend Customer's Services project for any accounts for which any payment is due but unpaid.

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Customer agrees that INNOVISE shall not be liable to Customer nor to any third party for any suspension of the Services project resulting from Customer's nonpayment of fees as described in this Section 7.1.

**7.2. Suspension For Ongoing Harm.** Customer agrees that INNOVISE may with reasonably contemporaneous telephonic notice to Customer suspend Customer's Services project if INNOVISE reasonably concludes that Customer use of the Services is causing immediate and ongoing harm to INNOVISE or others.

In the extraordinary event that INNOVISE suspends Customer's Services project, INNOVISE will use commercially reasonable efforts to resolve the issues causing the suspension of Services. Customer agrees that INNOVISE shall not be liable to Customer or to any third party for any suspension of the Services under such circumstances as described in this Section 7.2.

**7.3. In The Event of Breach.** Either party may terminate this Agreement upon thirty (30) days written notice to the other party in the event of a material breach of any provision of this Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Services. If this Agreement is terminated as a result of a material breach on INNOVISE's part, INNOVISE shall refund the pro rata unused portion of any Services fee that may have been paid by Customer for the portion of the Services not furnished to Customer.

**7.4. Customer Cancellation.** Customer can within the fourteen (14) days of signing the Quote cancel the Services project. INNOVISE will provide a fifty percent (50%) refund of the unused portion of Services within ten (10) days following the Customer's notice period. Customer acknowledges that cancellation after fourteen (14) days is not possible and that unused days will be subject to forfeit as described in Clause 2 of this Agreement.

**7.5. Termination Actions.** Upon termination of this Agreement as described in this clause 7, INNOVISE shall deliver up to Customer all correspondence, reports, documents, specifications, papers, information (in whatever media) and property belonging to Customer which may be in its possession or control. Customer shall immediately pay to INNOVISE all arrears of Fees detailed in the Quote and Expenses incurred.

## **8. Poaching of Staff.**

Each party undertakes that for the period of this Agreement and for 1 year thereafter, it will not attempt to solicit or entice away from the other any of the other's staff or sub-contractors who at any time have been engaged in the performance of this Agreement, in whatever respect.

For the avoidance of doubt, this clause is not intended to restrict either party from advertising vacancies to the general public and dealing with or

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employing any employee of the other party who responds to such advertisements without encouragement or prompt from the hiring party. However, evidence of such encouragement or prompt would constitute a breach.

In the event of breach of this obligation by either party, the other party will be entitled to claim against the offending party damages equal to the loss of revenue it has suffered as a result of such breach, which shall be calculated as a sum equal to one year's gross salary of the poached member of staff

**9. Modification To The Terms Of Service.**

INNOVISE reserves the right at any time and from time to time to modify these Terms of Service.

**10. Other Legal Conditions of the Terms of Service**

**10.1 Assignment** INNOVISE shall not transfer or assign the whole or any part of this Agreement without the prior written consent of Customer (such consent not to be unreasonably withheld) but shall be entitled to subcontract any part of the same upon the giving of not less than 21 days' notice to such effect to the Customer.

**10.2 Invalidity and Severability** If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. Customer and INNOVISE hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**10.3 Disputes** Customer and INNOVISE shall meet to discuss and resolve all matters not specifically provided for in this Agreement and which require a decision, and all differences, disputes or disagreements ("Disputes") which may arise between the parties.

If the parties are still unable to resolve any such matters they shall reconvene for further discussions within 48 hours of the previous meeting. If the parties are still unable to resolve such matters at the reconvened meeting, then the matters shall be referred to the Managing Director of the Customer and the Managing Director of INNOVISE for a decision.

If, despite such efforts, any Dispute cannot be resolved between the parties, the parties will attempt in good faith to resolve the Dispute through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.

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If the matter has not been resolved by an ADR procedure within 60 days of the initiation of such procedure, the Dispute shall be settled by the Courts.

**10.4 Waiver of Remedies** No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for any party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

**10.5 Entire Agreement** This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition or modification of any provision of this Agreement shall be binding upon the parties unless made in writing and signed by a duly authorised representative of each of the parties.

**10.6 Headings and Expressions** The headings contained herein are for convenience of reference only and shall not affect the construction hereof.

**10.7 FORCE MAJEURE** Neither party shall be liable for any default in its obligations under this Agreement resulting from causes beyond its reasonable control including without limitation, fires, strikes (of its own or of others' employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials or requirements or regulations of any civil or military authority.

In the event that those causes persist for a period in excess of 12 weeks either party shall have the right at any time after the end of that 12 week period if those causes persist to terminate the Agreement by giving not less than 30 days' written notice to the other.

**10.8 Notices.** All Notices will be served by email to Customer using the email address provided by Customer. All Notices served upon INNOVISE must be sent to [sales@innovise.com](mailto:sales@innovise.com). Receipt is assumed within 24 hours of an email being sent.

**10.9 Law** The parties hereby agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of England and Wales..

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**Exhibit A – STANDARD SERVICES  
STATEMENT OF WORK**

**Service Availability and Scheduling**

INNOVISE aims to complete all Services within thirty (30) days of a Quote being signed by Customer unless otherwise stated on the Quote.

Scheduling of Services consultants will be managed using email following acceptance of a signed Quote.

**Project Dependencies**

Customer is responsible for attending relevant sessions (e.g. training) and the provision of suitably prepared Customer staff.

Customer is responsible for making full payment of Services prior to the commencement of Services unless stated otherwise in the Quote. Failure to do so will be deemed cancellation of the Services and may incur forfeit for lack of notice.