

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2009 between:

**The Supplier –** Innovise Software Ltd, a trading division of Innovise plc Registered in England No: 05640283, Hellier House, Wychbury Court, Two Woods Lane, Brierley Hill, West Midlands, DY5 1TA  
**and**  
**The Customer –**

I am authorised by the above named company and agree to the service level shown below at the quoted price, subject to variation as outlined in the terms and conditions.

Name \_\_\_\_\_ Position \_\_\_\_\_  
 Date \_\_\_\_\_ Signature \_\_\_\_\_

Support Level	Current Cost per annum	Payment Period	Payment Method
Standard		Annual	Direct Debit

All charges are in advance, due by the first day of the Support period.

### TERMS & CONDITIONS

**(1). Provision of Services**

The Supplier shall provide a telephone based Help-Desk for Software and Technical support, available 365 days a year and 24 hours a day. The Supplier shall also provide an error correction and Software updating service. The aim of these services is to provide ongoing advice and support in the operation of the Hardware/Software and resolutions to Technical Problems experienced with the Hardware/Software by The Customer. The Supplier shall ensure that its employees providing support services (either by telephone, internet support or on Customer premises) are adequately trained and experienced.

Upon receipt of a support request from The Customer, The Supplier shall carry out diagnosis remotely by telephone or remote access link (where hardware/software is available) of any Software or Hardware fault reported in an item of Hardware or Software as defined in the Product Schedule, making all findings of such diagnosis available to The Customer. Where remote diagnosis fails to resolve the fault, we shall take all reasonable efforts to provide parts and on-site assistance to resume normal working of the Software/Hardware, subject to costs outlined in clause (2).

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 Hardware/ Software, The Supplier will use its reasonable 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).

**(2.1) Support Levels and Times**

The Supplier operates two levels of support service:

- **Standard:** Monday to Friday, 9am to 5pm (excluding UK public and bank holidays). Includes helpdesk telephone support and updates to Software. 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.
- **Premium:** Standard cover plus 10 free out-of-hours support incidents managed by telephone and remote diagnostics.

**(2.2) Additional Charges**

The Supplier will levy additional charges in the following cases as outlined (where Office Hours are defined as Monday to Friday 09:00 to 17:00, excluding UK public and bank holidays. Out of Hours is defined as all other times):

- a) Telephone/Remote Diagnostic management of Out-of-Hours incidents relating to The Supplier products and services at a initial charge of £100 plus £50 per hour or part hour spent responding to the incident
- b) Telephone/Remote Diagnostic management of Office Hours incidents relating to non-The Supplier products or services at an initial charge of £50 plus £50 per hour or part hour spent responding to the incident
- c) Telephone/Remote Diagnostic management of Out-of Hours incidents relating to non-The Supplier products or services at an initial charge of £100 plus £100 per hour or part hour spent responding to the incident
- d) On-site Office Hours support will be charged at the Standard Daily Rate, plus expenses and parts (parts will be charged when out of warranty). Out of Hours On-Site support will be negotiated on a case by case basis.
- e) 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 Office Hours and £100 Plus £100/Hour at other times.

**(3.0) Termination**

This agreement shall continue in force for a period of not less than 12 months and will automatically continue for further periods of 12 calendar months unless either party has given the other not less than 90 days written notice of termination. In the event that payment is not received by the first day of the Support period The Supplier reserves the right to suspend service at its discretion until all due monies are paid, without liability for any loss of business, date or any other claims due to the suspension of support services. This agreement may be terminated forthwith by either party if the other party is in material breach of the terms of agreement and fails to remedy such breach within 30 days of receipt of notice thereof in writing. Termination of the Agreement shall not prejudice any rights of either party which may have arisen on or before the date of termination.

**(4.0) Variation**

The Supplier may from time to time vary all or part of the Terms & Conditions and Support Charges by giving not less than 60 days written notice to The Customer. In the event that The Customer changes the product and services acquired from The Supplier, the changes to support charges will take immediate effect from the date of implementation.

### (5.0) Disclaimers and Limitation of Liability

You hereby acknowledge that the allocation of risk in this agreement reflects the price paid for the service and that it is not within The Supplier's control how and for what purpose its products and services are used by The Customer. In no event therefore will The Supplier be liable for any indirect, consequential, incidental or special damage or loss of any kind however caused and whether arising under contract or tort, including negligence or otherwise. If any exclusion, disclaimer or other provision contained in this agreement is held to be invalid for any reason by a court of competent jurisdiction and The Supplier becomes liable thereby for loss or damage that could otherwise be limited, such liability whether in contract, tort or otherwise, will not exceed the amount actually paid for the service during one calendar year. For the avoidance of doubt, the Supplier does not exclude liability for death or personal injury where it arises as a result of the negligence of the Supplier, its employees, agents or authorised representatives.

### (6.0) Customer Requirements

It is a condition of the Service & Support Agreement that the Customer:

- a) Makes all payments for the Service by the first day of the Support period and informs The Supplier of any change to billing details in a timely manner
- b) Reports Hardware/Software faults, giving them a priority (rated 1 through to 5) and will receive an immediate call logging number from The Supplier. The following definitions of priorities shall apply:

1	Critical Failure". Where a fault materially affects performance and/or functionality and/or ability of the Hardware/Software to perform its task and which in part or completely prevents The Customer from trading and carrying out its business.
2	"Serious Failure". Where a fault materially affects performance and/or functionality and/or ability of the Hardware/Software 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 Hardware/Software to perform its task but does not prevent The Customer from using the Hardware/Software for the purposes specified.
4	"Low Impact Failure". Where a fault has little material affect on the performance and/or functionality and/or ability of the Hardware/Software to perform its task.
5	"Minor bug". Where a fault has no material affect on the performance and/or functionality and/or ability of the Hardware/Software to perform its task.

- c) maintains the Site in such condition as The Supplier may advise and it would be reasonable to expect for the operation of computer equipment
- d) provides The Supplier with access to Hardware and Software and appropriate working space and facilities together with access to those of the Customer's information and facilities which may be necessary to assist The Supplier in effecting the provision of the Support
- e) maintains procedures logging the time and information concerning any particular failure of The Supplier Software, Hardware or Services
- f) returns to The Supplier all previous copies of the Software when any new or corrected versions are supplied
- g) ensures that all users of the Software and Hardware systems are trained to an acceptable standard of competence, and if a high level of support calls are received from inexperienced operators The Supplier may make additional charges under these circumstances

### (7.0) Limitations and Exclusions

The Supplier will use all reasonable endeavours to respond to calls for the Support and provide updates of status and possible remedies promptly: we intend 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.

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. However no guarantee or warranty is given of any times for response or that The Supplier will be able to rectify the problem within a particular time scale. In particular, the availability of replacement parts may significantly affect The Supplier response times. Any modification or error correction to the Software is dispatched by normal first class post or email but does not cover delivery by other means for example by a carrier or modem. Any other such delivery can however be arranged at the cost of the Customer.

The Supplier's obligation to provide the Services and Support is conditional upon the proper use of Hardware and the Software and The Supplier shall be under no obligation to provide the Support where failure is due to any of the following:

- a) Improper use, neglect or accident in respect of Hardware or the Software
- b) Modifications, alterations or repairs or error correction are carried out to Hardware or the Software other than by The Supplier or with The Supplier's prior written approval
- c) Any failure due to electricity supply, inadequate cooling, fire or flood or natural disasters
- d) Combination of the Software or Hardware with any equipment or software programs not supplied or previously approved by The Supplier
- e) Failure to keep the Software supported to the release level recommended by The Supplier.

### (8.0) Online Ordering

The Supplier operates an online ordering system for existing customers and The Customer hereby agrees to make use of the online ordering system and to honour orders accepted electronically by its staff members.

### (9.0) Arbitration

Any dispute arising out of or in connection with this Agreement shall be referred to the arbitration in England of a single arbitrator appointed by agreement between the parties or in default of agreement nominated by The Supplier.

### **(10.0) 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).

The Supplier will restrict its employees' access to Customer's Confidential Information to only those employees necessary to successfully provide the Service. Supplier 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 Supplier 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 10.0 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.

### **(11.0) FORCE MAJEURE**

If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of fire, flood, earthquake or other catastrophe, labour dispute, inability to procure supplies of power, war or other violence, law, order, regulation, ordinance or requirement of any governmental agency or any other act or condition ("force majeure circumstances") beyond the reasonable control of the Supplier or the Customer ("the affected party") then the affected party upon notice to the other party shall (save as is otherwise contemplated by this Agreement) be excused from such performance to the extent of such prevention, restriction or interference.

### **(12.0) General Terms**

- a) This Agreement constitutes the entire agreement between the parties to the exclusion of all other items, conditions and warranties unless subsequently thereto agreed in writing between the Company and the User.
- b) If any part term or provision of this Agreement is held illegal, unenforceable or in conflict with the law the validity or enforceability of the remainder hereof shall not be affected thereby.
- c) No waiver by either party or any breach by the other party of any obligation contained herein shall constitute a waiver of any other obligation contained herein. Any waiver, to be effective, must be in writing.
- d) Nothing herein shall be construed as giving the User any rights to use the Product directly or indirectly on behalf of others in any computer service bureau operation or hosted service.
- e) This Agreement shall be construed in accordance with the laws of England and Wales.
- f) All notices to be given or made hereunder shall be in writing and addressed to the party to receive the same at the address specified in this agreement or as such party may notify to the other from time to time in writing.