



## Terms and Conditions for Servicetrac

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### Abstract

*This document forms a legal agreement between Innovise and its Customers making use of the Servicetrac application and support Service*



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## Contents

Version History	2
<b>Terms of Service .....</b>	<b>3</b>
Application of the Agreement	3
1. Terms of License to use the Service.	3
2. Terms of Service.	5
3. Warranties.	9
4. Disclaimer Of Warranties.	10
5. Limitations Of Liability.	11
6. Indemnification.	12
7. Suspension/Termination.	12
8. Modification To Or Discontinuation Of The Service.	14
9. Variation	14
10. Other Legal Conditions of the Terms of Service	14
<b>Appendix A - SERVICE LEVEL AGREEMENT.....</b>	<b>17</b>
Service Availability	17
<b>Appendix B – SUPPORT SERVICE .....</b>	<b>18</b>
<b>Appendix C – SERVICE SECURITY .....</b>	<b>21</b>
Security Overview	21

### 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
01/07/2007	1.0	Created	Mike Taylor
25/07/2007	1.1	Amended	Mike Taylor
07/07/2008	1.2	Amended – merge agreements into one	Mike Taylor

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## Terms of Service

### **Application of the Agreement**

THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING ON CUSTOMER UPON USE OF THE SERVICETRAC SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE USING THE SERVICE. 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 SERVICE AND CONTACT INNOVISE TO TERMINATE YOUR CONTRACT.

### **1. Terms of License to use the Service.**

Definitions:

- "Customer data" shall mean any data, information, or other materials of any nature whatsoever, provided to INNOVISE by the customer in the course of implementing and/or using the service.
- "Electronic communications" shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically.
- "Seat" means a unique login for each general access user.
- "Term" means any initial term and/or renewal term as defined in section 1.4 of this agreement.

#### **1.1 Products and Services.**

INNOVISE will provide Customer with an online business application and any new features that augment or enhance the current business application (the "service"). INNOVISE shall host the service and may update the content, functionality, and user interface of the service from time to time in its sole discretion and in accordance with this agreement. Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new Service(s) subsequently purchased by the Customer will be subject to this Agreement.

#### **1.2. License authority**

Subject to the terms and conditions of this agreement, INNOVISE grants Customer during the term of this agreement the non-exclusive, non-transferable (except in connection with an assignment detailed later and herein) and terminable license to use the service and to display content solely for Customer's internal business operations, provided such operations shall not include service bureaux use, outsourcing, renting, or time-sharing the service.

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Customer acknowledges and agrees that the license granted herein is not a concurrent user license and that the rights granted to Customer are provided to Customer on the condition that Customer does not (and does not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the service or any part thereof or otherwise attempt to discover any source code, modify the service in any manner or form, or use unauthorised modified versions of the service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorised access to the service. The Customer is expressly prohibited from sublicensing use of the service to any third parties.

**1.3. License from the Customer.**

Subject to the terms and conditions of this agreement, the Customer grants INNOVISE the non-exclusive non-transferable (except in connection with an assignment sections detailed later in this agreement) license to copy, store, record, transmit, maintain, display, view, print, or otherwise use Customer data to the extent necessary to provide the Service to Customer. The Customer further agrees that the license to Customer data shall survive the termination of this agreement for one year, solely for the purpose of storing backup Customer data at an offsite storage facility.

**1.4. License term, fee and payment.**

The initial term of this agreement is for 12 months from the date indicated on the INNOVISE quote accepted by the Customer, which shall include extension thereof as provided by any subsequent agreement of the parties. The Customer shall pay the fee described in the relevant INNOVISE quote and any additional quotes that may be agreed between the parties from time to time for the Services listed. The fee is due as per the quote, or where not stated, 100% in advance of an implementation.

The customer has the option to extend the initial term of this agreement, and unless they otherwise stipulated the initial term will automatically be renewed and invoiced for successive one year periods ("renewal term"), unless customer terminates this agreement as described in Clause 7.0 of this Agreement. Such notice shall be sent to [sales@innovise.com](mailto:sales@innovise.com) and marked FAO "Terminate License".

After the initial term, INNOVISE reserves the right to increase the Service fee by up to ten (10) percent per annum giving not less than sixty (60) days notice to the Customer. Any late payments shall be subject to interest charges equal to the maximum amount allowed by statute. In the event that INNOVISE incurs any costs (including but not limited to legal and professional fees) for efforts in collecting overdue payments from customer, the customer agrees to pay such costs.

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The customer further agrees to pay all taxes, if applicable, for the customer's access to, use, or receipt of the Service.

**2. Terms of Service.**

Customer acknowledges and agrees to the following terms of service. In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new Service(s) subsequently purchased by the Customer will be subject to this Agreement.

**2.1. Customer Must Have Internet Access.** In order to use the Service, 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 account.

**2.3. Email, Notices and Online Ordering.** 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. INNOVISE 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. 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 either e-mail or posting on the Service.

**2.4. Passwords, Access, And Notification.** Customer may designate up to the number of users under Customer's account, which corresponds to the number of Seats purchased by Customer, and Customer may provide and assign unique passwords and user names to each authorized user for each Seat purchased. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and/or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and user names.

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Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. INNOVISE will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer agrees to immediately notify INNOVISE if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user names, and/or account number.

**2.5. Customer's Lawful Conduct.** The Service allows Customer to send Electronic Communications directly to INNOVISE and to third-parties. Customer agrees to comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications, and anti-spam legislation. Customer will not send any Electronic Communications from the Service that is unlawful, harassing, libelous, defamatory, or threatening.

Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by INNOVISE. Customer shall not license, rent, sell, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the Service available to any third party other than an authorized user, including but not limited to, creating Internet Links to the Service which include log-in information, including but not limited to, user names, passwords, secure cookies, and/or "mirroring" or "framing" any part of the Service.

Customer will not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by INNOVISE. Neither Customer, nor someone acting on Customer's behalf, will use the Service to target for solicitation any INNOVISE customers for purposes of providing any competitive product.

**2.6. Third-Party Software.** Customer agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by INNOVISE. Until notified otherwise by INNOVISE, Customer agrees to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by INNOVISE and to follow logon procedures for services that support such protocols.

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Customer acknowledges that INNOVISE is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks not owned or operated by INNOVISE or telecommunications facilities, including, but not limited to, the Internet.

**2.7. Transmission Of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to INNOVISE's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by INNOVISE. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means.

Customer agrees that INNOVISE is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted or stored without authorization.

**2.8. Links.** The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because INNOVISE has no control over such sites and resources, Customer acknowledges and agrees that INNOVISE is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.

**2.9. INNOVISE's Support.** INNOVISE will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to providing Customer with a remote Support Service (as detailed in Support Service appendix), User Guides, Knowledge Base and online help. INNOVISE also offers Professional Services consultation and training at additional cost. Unless purchased in advance, Customer is provided Standard support and out of hours calls will incur additional charges as detailed in the Support Service appendix.

**2.10. Proprietary Rights and IPR.** Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that content or information presented to Customer through the Service or by advertisers may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.

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Innovise alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Innovise Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Innovise Technology or the Intellectual Property Rights owned by Innovise.

**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 "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.

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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 Storage Limits.** INNOVISE currently limits the amount of database storage to 1GB. Any customers using database storage in excess of this limit will be charged additional fees.

### **3. Warranties.**

**3.1. Warranty Of Functionality.** INNOVISE warrants to Customer during the Term of this Agreement that the Service will achieve in all material respects the functionality described in the User Guides and in other related documentation (available at [www.INNOVISE.com](http://www.INNOVISE.com) or successor Web site) and that such functionality will be maintained in all material respects in subsequent upgrades to the Service.

INNOVISE does not warrant that the Service will be error-free. Customer's sole and exclusive remedy for INNOVISE's breach of this warranty shall be that INNOVISE shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the User Guides and other related documentation and if INNOVISE is unable to restore such functionality Customer shall be entitled to terminate the Agreement and shall be entitled to 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.

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 functionality problem, and such notice must be sent to [sales@innovise.com](mailto:sales@innovise.com).

**3.2. Service Level Warranty.** INNOVISE warrants during the Term of this Agreement that the Service will meet the service levels outlined in Exhibit A hereto. In the event that INNOVISE fails to meet the service levels outlined in Exhibit A hereto, Customer's sole and exclusive remedy is that INNOVISE shall be required to use commercially reasonable efforts to modify the Service to achieve Service availability of 85% or higher within thirty (30) days of notice. In the event INNOVISE is unable to achieve this Service availability level as provided in this Section 3.2, Customer's sole and exclusive remedy shall be 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.

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**3.3. Security, Data Maintenance And Backup Warranty.** INNOVISE warrants during the Term of this Agreement that INNOVISE will use commercially reasonable efforts to ensure that Customer's Data will be safeguarded and maintained accurately.

INNOVISE also warrants that it will, at a minimum, utilize and maintain security and backup procedures as listed in Exhibit B hereto (and hereby incorporated by reference) to protect Customer Data. In the event of a breach of this provision, INNOVISE will use commercially reasonable efforts to correct the Customer's Data or restore the Customer's Data within five (5) business days. In the event INNOVISE is unable to correct or restore Customer's Data as provided in this Section 3.3, Customer's sole and exclusive remedy shall be 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.

**3.4. Non-Infringement Warranty.** INNOVISE warrants that it is the sole owner and has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein will in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

**4. Disclaimer Of Warranties.**

EXCEPT AS STATED IN SECTION 3 ABOVE, INNOVISE DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY INNOVISE. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 3 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

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## **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. INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, 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 equivalent of 12 months in license fees applicable at the time of the event.

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 license of the Service 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 TO ANY CLAIM FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF INNOVISE, ITS EMPLOYEES OR CONTRACTORS.

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## **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 Service; 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 Service with a non-infringing Service. 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 2.5 and 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 access and/or use of the Service for any accounts for which any payment is due but unpaid but only after INNOVISE has provided Customer three (3) email notices over no less than a thirty (30) day period. Customer agrees that INNOVISE shall not be liable to Customer nor to any third party for any suspension of the Service resulting from Customer's nonpayment of fees as described in this Section 7.1.

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

In the extraordinary event that INNOVISE suspends Customer's access to the Service, INNOVISE will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that INNOVISE shall not be liable to Customer or to any third party for any suspension of the Service 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 material breach. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated as a result of a material breach on INNOVISE's part, INNOVISE shall refund the pro rata portion of any fee that may have been paid by Customer for the portion of the Service not furnished to Customer.

**7.4 Termination for Convenience.** Either party may terminate this agreement giving ninety days written notice to the other party, following the first twelve (12) month term. For the avoidance of doubt, no termination for convenience is possible during the first twelve (12) months.

**7.5. Handling Of Customer Data In The Event Of Termination.** Customer acknowledges and agrees that following termination of Customer's account and/or use of the Service, INNOVISE may immediately deactivate Customer's account and that following a reasonable period of not less than 30 days shall be able to delete Customer's account and related Customer Data. However, in the event that Customer's Service with INNOVISE terminates, (other than because of a breach by Customer), INNOVISE will make available to Customer a file of the Customer Data within 30 days of termination if so requested by Customer at the time of termination. INNOVISE reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, Customer non-payment. Upon termination for cause, Customer right to access or use Customer Data immediately ceases, and INNOVISE shall have no obligation to maintain or forward any Customer Data.

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## **8. Modification To Or Discontinuation Of The Service.**

INNOVISE reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that INNOVISE modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, INNOVISE, at Customer's request, shall use commercially reasonable efforts to substantially restore such functionality to Customer.

In the event that INNOVISE is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the license fees paid under the Agreement for use of the Service which was paid for by Customer but not yet furnished by INNOVISE as of the date of such termination. Customer acknowledges that INNOVISE reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that INNOVISE shall not be liable to Customer or to any third party for any modification of the Service as described in this Section 8.

## **9. Variation.**

INNOVISE reserves the right at any time to modify these Terms of Service by giving not less than 60 days written notice to the Customer of any material change. For the avoidance of doubt, an increase in the subscription fee to access the Service is considered a material change.

In the event that the Customer changes the Services acquired from INNOVISE, the changes to charges and fees will take immediate effect from the date indicated on the INNOVISE quote.

## **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.

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**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.

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.

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**10.8 Local Laws and Export.** This Service provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

INNOVISE and its licensors make no representation that the Service is appropriate or available for use in other locations. If Customer uses the Service from outside the United States of America, Switzerland and/or the European Union, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

**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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**Appendix A - SERVICE LEVEL  
AGREEMENT**

**Service Availability**

INNOVISE conducts maintenance and upgrades during scheduled times.

The scheduled time for maintenance and upgrades is Friday and Saturday nights from 10 p.m. to 3 a.m. GMT.

Outside of this time INNOVISE will use commercially reasonable efforts to provide uninterrupted Service.

INNOVISE reserves the right on approximately a quarterly basis to issue new releases in which INNOVISE adds functionality to the Service. Customer acknowledges that these periodic major releases can take several hours to complete.

In the event that INNOVISE in its sole discretion determines that any unscheduled maintenance is necessary, INNOVISE will use commercially reasonable efforts to notify Customer.

For the avoidance of doubt, the calculation of Service availability will be based upon monthly uptime excluding any period when Customer was notified of maintenance or upgrade activity.

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## Appendix B – SUPPORT SERVICE

### 1.0. Provision of Support Services

INNOVISE shall provide a telephone based Help-Desk for technical support of users of the Service, available 365 days a year and 24 hours a day. INNOVISE shall also provide an error correction and Service updating service. The aim of these services is to provide ongoing advice and support in the operation of the Service and resolutions to technical problems experienced with the Service by The Customer. INNOVISE 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, 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, we shall take all reasonable efforts to provide on-site assistance to resume normal working, subject to costs outlined in clause 2.0 of this Appendix.

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 Service, 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 3.0 of this Appendix.

### 2.0. Support Levels and Times

INNOVISE 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 Service. 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.

Unless otherwise stated in the INNOVISE quote accepted by the Customer, the support service will be the Standard version and additional charges will apply to incidents outside of office hours.

### 3.0 Additional Charges

INNOVISE 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):

- Telephone/Remote Diagnostic management of Out-of-Hours incidents relating to the INNOVISE Service at a initial charge of £100 plus £50 per hour or part hour spent responding to the incident

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- Telephone/Remote Diagnostic management of Office 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 Office 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 Office Hours and £100 Plus £100/Hour at other times.

#### **4.0 Customer Case Logging**

Customer must report all Service 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 Service 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 Service 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 Service to perform its task but does not prevent the Customer from using the Service 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 Service to perform its task.
5. Minor bug or Enhancement Request. Where a fault has no material affect on the performance and/or functionality and/or ability of the Service to perform its task.

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

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### **5.0 INNOVISE Access**

The Customer must provide INNOVISE with remote access to hardware and software together with access to those of the Customer's information and facilities which may be necessary to assist in effecting the provision of the Support and Service.

### **6.0 User Training**

The Customer must ensure that all users of the Service 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 2.2 of this appendix.

### **7.0 INNOVISE Response and Obligations for Support**

INNOVISE will use reasonable commercial endeavours to respond to calls for the Support 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. INNOVISE will provide prompt updates during the course of such calls once 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 and Support is conditional upon the proper use of Hardware and the Software and INNOVISE shall be under no obligation to provide the Support where failure is due to any of the following:

- Improper use, neglect or accident in respect of the Service
- Modifications, alterations or repairs or error correction are carried out to the Service 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 Service with any equipment or software programs not supplied or previously approved by INNOVISE

**Security Overview**

INNOVISE's security strategy is to protect Customer data at multiple levels. To ensure the privacy, security, and availability of Customer data and transactions, INNOVISE employs the following technologies in delivering its service.

- Secure Data Centre
- User Authentication
- Internet Firewalls
- Network Translation and Proxy Services
- Redundant, Highly Available Routers and Switches
- Redundant, Highly Available, and Secure Web and Application Servers
- Redundant, Highly Available Power
- Redundant, Highly Available Data Access
- Regularly Scheduled Backups, Offsite Storage
- Highly Available Application
- Secure Operating Systems
- Data Security

**Data Center Security**

INNOVISE's production systems are located in co-location facilities in the European Union. Production web, application, and database servers along with network equipment are housed in a suite at the co-location facilities which provides 24x7 security. To access the suite there are several levels of security that must be passed. Access to the facilities is tightly controlled to registered users.

**System Security**

INNOVISE uses tightly controlled passwords on its servers and network equipment. INNOVISE limits access to production systems to authorized personnel only. Passwords are changed on a regular basis. Security updates to the operating systems are tracked and updated as necessary.

**System Reliability**

INNOVISE looks at its application as well as the infrastructure as a tightly integrated system. All aspects of the system are designed to be reliable to ensure continued availability in the event that a component fails. All web and application servers are configured in a redundant manner and are monitored 24x7.

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### **Data and Backups**

The Customer data is stored on a server that is configured with disk resilience to provide redundancy. All The Customer data is automatically backed up daily and stored offsite at regular intervals.