

INVENIAS SERVICE TERMS AND CONDITIONS

This Agreement is agreed between Invenias Limited, a company incorporated in England, with the company number 05323637 and whose registered address is Davidson House, Forbury Square, Reading, Berkshire RG1 3EU, United Kingdom (**Invenias**) and the entity that purchases the Services from Invenias pursuant to and as identified on the Order Form (**Customer**). This Agreement governs all purchases by the Customer from Invenias.

1. **Definitions**

1.1 Capitalised terms used in this Agreement shall have the meanings set out below:

Affiliate means, with respect to either party, any legal entity that directly or indirectly controls, is controlled by or is under common control with such party, where "control" means (i) ownership of more than 50% of the equity of such party or entity or (ii) the power to direct or cause the direction of the management and policies of such party or entity.

Agreement means these Invenias Service Terms and Conditions, together with the Schedules to these terms, the Order Form, the Special Terms and any other documents to which reference may properly be made in order to ascertain the rights and obligations of the parties;

Community Users means individuals who are not Customer Users but who are permitted by the Customer to access the Invenias Platform. The scope of the use of the Invenias Platform granted to each Community User is defined by reference to the Products licensed by the Customer as set out in the Order Form;

AUP means [Invenias' Acceptable Use Policy](#) as amended from time to time;

Customer Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Invenias Platform. The scope of the use of the Invenias Platform granted to each Customer User is defined by reference to the Products licensed by the Customer as set out in the Order Form;

Confidential Information means any technical, business, marketing, sales, Affiliate, customer, licensor or other supplier, financial, pricing, employee or other information disclosed hereunder in any form, which is either (a) marked or identified as confidential at the time of disclosure or (b) of a nature generally understood to be confidential provided the disclosing party generally treats it as confidential;

Customer Data means data inputted by the Customer, Customer Users, Community Users or Invenias on the Customer's behalf for the purpose of using the Invenias Platform or facilitating the Customer's use of the Invenias Platform and any Customer Material;

Customer Material means any proprietary products, materials, tools or methodologies of the Customer provided by the Customer to Invenias in order to enable Invenias to provide the Professional Services and/or any Deliverables (as applicable);

Deliverable means a defined deliverable to be supplied by Invenias to the Customer and/or developed by Invenias for the Customer as part of the Professional Services and as more particularly detailed in the Order Form or in a Professional Services Specification as applicable;

Documentation means the information in electronic form made available to the Customer by Invenias from time to time which sets out a description of the different Invenias products and services and the user instructions for the Services;

Effective Date means the date this Agreement is effective as set out in clause 2.5;

Fees means the fees payable by the Customer to Invenias in respect of the Services as set out in the Order Form and clause 12 of this Agreement;

Invenias Cloud means the cloud based hosting, application and data services managed and provided by Invenias to the Customer under this Agreement;

Invenias Help Centre means the online portal which Invenias makes available to Customer Users containing information in relation to the Services;

Invenias Platform means the Invenias Cloud and the use of the Software to access the Invenias Cloud;

Invenias User Notice means the [Invenias User Notice](#) as amended from time to time;

Licensed Device has the meaning given to it in clause 6.4;

Order Form means an 'Invenias Order Form', signed (whether by hand or by electronic means) by both parties, for the purchase by the Customer of the Services;

Privacy Policy means the [Invenias User Privacy Policy](#) as amended from time to time;

Product License means a license (as specified in the Order Form) purchased by the Customer for its Customer Users to use particular Products;

Products means products and services as specified in the Order Form forming part of the Invenias Platform the scope of which are described in the Documentation;

Professional Services means the data migration, implementation, report writing, data cleansing, integration, training and/or any other bespoke services as agreed in writing by the parties in an Order Form to be provided by Invenias to the Customer;

Professional Service Specification means a document referred to in clause 5.2 to be agreed and signed by both parties which sets out details of the Professional Services agreed to be provided by Invenias to the Customer and containing specific terms as have been agreed between the parties (if any);

Recognised Holidays means national holidays such as New Years' Day, Chinese New Year, Easter Friday, Easter Monday, Thanksgiving, Christmas and Boxing Days, the exact dates of which are set out in the Invenias published holiday list available in the Invenias Help Centre;

Services means the Invenias Cloud, the Support Services, the Professional Services and Deliverables and/or the Software, as applicable, given the context in which the term Services is used;

Software means the software applications provided by Invenias as part of the Services, but excluding any Open Source Software or Third Party Software as defined in clause 7;

Special Terms means any terms identified as such in the Order Form or in these Invenias Service Terms and Conditions;

Start Date is the date the Invenias Platform is made available by Invenias to the Customer as identified in the Order Form;

Support Hours means the hours that the Invenias support team is available which is defined in Schedule 1;

Support Services means the support services described in Schedule 1;

Support Services Policy means the policy referred to in clause 4.6;

Term means the initial term specified in the Order Form and any renewal term (subject to the termination provisions in this Agreement) for the provision of the Invenias Platform as further defined in clause 15.2.1;

User means Customer Users, Community Users and any other individual who may be authorised by the Customer to access or use the Services and the Documentation in accordance with this Agreement;

User License means each user subscription purchased by the Customer (the number and type of which are set out in each applicable Order Form) which entitles Users to access and use the Invenias Platform in accordance with this Agreement; and

Virus means any item, software, device or code which is intended by any person to, or which is likely to, or which may: impair or prevent the operation of any software or computer systems; cause loss of, or corruption or damage to any software or computer systems or data; prevent access to any software or computer system or data; or damage the reputation of Invenias.

1.2 The word "including" and similar shall not limit any preceding category.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other genders.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. Basis of Agreement

2.1 Subject to any variation under clause 2.2, any contract formed by Invenias and the Customer will be on the terms of this Agreement to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Any variation to this Agreement and any representations about the Services shall have no effect unless expressly agreed in writing and signed by duly authorised signatories of Invenias and the Customer.

2.3 Receipt by the Customer of an Order Form completed by Invenias and incorporating these Invenias Service Terms and Conditions shall not constitute an offer but an invitation to treat.

2.4 Signature (whether by hand or electronically) of an Order Form by the Customer constitutes an offer by the Customer to purchase the Services specified in the Order Form on the terms and conditions contained in this Agreement.

2.5 No order placed by the Customer shall be deemed to be accepted by Invenias until Invenias has accepted such offer by signing and dating the Order Form or, if sooner, Invenias has commenced provision of the Services to the Customer. This shall be the "Effective Date" of this Agreement.

- 2.6 In the event of any conflict between the documents forming this Agreement, they shall be interpreted in the following order of precedence:
- The terms contained in an Order Form;
 - The Special Terms;
 - The terms and conditions set out in the main body of these Invenias Service Terms and Conditions; and
 - The Schedules to these Invenias Service Terms and Conditions.

3. User Licenses

- 3.1 Subject to the Customer purchasing the User Licenses and (if required) Product Licenses and paying the applicable Fees, Invenias grants to the Customer a non-exclusive, non-transferable right to use, and to permit the Customer Users and Community Users to use, the Invenias Platform for the Term on the terms of this Agreement and solely for the business purposes and benefit of the Customer.
- 3.2 The types of User License are defined by reference to the type of User and the Product licensed by the Customer as specified in the Order Form. The Customer may permit Community Users to access the Services in the limited manner described in the applicable Documentation.
- 3.3 The Invenias Platform allows the Customer to purchase additional User Licenses of a type already purchased by following the steps set out in the Invenias Help Centre. In the event the Customer purchases additional User Licenses in this manner, the Customer will be billed for such additional User Licenses in accordance with clause 12.1.2 and the rights granted pursuant to clause 3.1 shall apply for the remainder of the Term. If the Customer wishes to purchase additional User Licenses of a type not already purchased, Invenias and the Customer will need to agree the terms of a new Order Form which will operate as a variation to this Agreement.
- 3.4 The Customer shall be entitled at any time to reduce the number of User Licenses that it has purchased subject to giving Invenias a minimum of 30 days' notice to expire on the last day of a month and provided that the Customer shall not be entitled to reduce its number of User Licenses below its minimum commitment as specified in the Order Form.
- 3.5 In relation to the Users, the Customer undertakes that:
- 3.5.1 the maximum number of Users that it authorises to access and use the Invenias Platform shall not exceed the number and type of User Licenses it has purchased from time to time;
 - 3.5.2 it will not allow any User License to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Invenias Platform provided that a User License may not be reassigned more than four times in any calendar month; and
 - 3.5.3 each User shall keep a secure password for his use of the Services and that each User shall keep his or her password confidential.
- 3.6 Prior to use of the Invenias Platform, all Users are required to acknowledge and accept the terms of the Invenias User Notice.
- 3.7 The Customer shall be responsible for any breach of the terms of this Agreement and/or the Invenias User Notice by any of its Affiliates, Users and any other person who accesses the Services using Customer access credentials or systems (whether permitted to do so by the Customer or not).
- 3.8 The Customer shall not (and shall ensure that its Users shall not) use the Invenias Platform in breach of the AUP. If the Invenias Platform is used with Customer credentials in a manner which infringes the AUP or this Agreement, or if the Customer otherwise infringes this Agreement, Invenias may suspend access to the Invenias Platform until the Customer has demonstrated that the relevant infringement has been remedied. The Customer's payment and other obligations shall continue to apply during any period of suspension pursuant to this clause.
- 3.9 The Customer shall promptly notify Invenias of any unauthorised access to or use of the Invenias Platform.

4. Invenias Platform and Support Services

- 4.1 Invenias shall, during the term of the Agreement, provide the Invenias Platform and make available the Documentation to the Customer on and subject to the terms of the Agreement.
- 4.2 Invenias may make operational changes to the Services without giving prior notice to the Customer and may control, direct and establish technical procedures for the use and supply of the Services provided that such operational changes do not detrimentally affect the performance of the Services.
- 4.3 Invenias offers Customers options to utilise or purchase (as applicable) different Products within the Invenias Platform. These Products and service options are specified in the Order Form and described in the Documentation. Additional terms and conditions may apply to certain Products and service options which will be included as Special Terms if applicable. If the Customer selects the "Mobile Save to Invenias" Product, the Special Terms set out in Schedule 2 will apply.
- 4.4 Where the Customer buys a Product License which allows the Customer to reach out to third party visitors to its own websites, the Customer acknowledges that if the Customer wishes to engage with a visitor via the Invenias Platform, the Customer must invite that visitor to register as a Customer User or Community User (as appropriate) and shall ensure that it has purchased enough User Licenses of the appropriate type to engage with that User.
- 4.5 Invenias shall use commercially reasonable endeavours to provide the Invenias Cloud with a minimum availability of 99.95% excluding:
- 4.5.1 scheduled downtime for maintenance of the hosting facilities by Invenias' sub-contractors;
 - 4.5.2 scheduled downtime for maintenance by Invenias of its data and web applications;
 - 4.5.3 emergency downtime required to maintain the Invenias Cloud carried out between the hours of 10.00pm and 5.00am in the jurisdiction in which the data centre requiring maintenance is located;
 - 4.5.4 agreed downtime in order to upgrade the Customer (and its Licensed Devices) to a new version of the Software or to provide maintenance or Professional Services, for example, data cleansing, to the Customer;
 - 4.5.6 downtime caused by the Customer, its Users or a force majeure event; and
 - 4.5.7 downtime of internet and other network service providers.

Scheduled downtime under clause 4.5.1 shall be no more than 4 hours in any one calendar month for each particular hosting facility and under clause 4.5.2 no more than 4 hours in any one calendar month and shall be undertaken outside core business hours (9am to 5pm) in the jurisdiction in which the data centre requiring scheduled maintenance is located. Invenias shall provide notice of any scheduled downtime for maintenance by posting a notification on the Invenias Help Centre in advance of such downtime.

- 4.6 Invenias will provide the Customer with Invenias' standard customer support services in accordance with the provisions set out in Schedule 1 and the Invenias Support Services Policy in effect at the time and available on the Invenias Help Centre. Invenias may amend the Support Services Policy in its sole and absolute discretion from time to time.

5. Professional Services

- 5.1 Unless otherwise specified in the Order Form, the scope of Professional Services ordered by the Customer and the Fees payable for the Professional Services shall be as set out in the Order Form.
- 5.2 Where specified in the Order Form, before commencing some or all of the Professional Services, the parties shall agree a Professional Services Specification. The Professional Services Specification shall be prepared by Invenias for agreement with the Customer and will include the scope of the Professional Services covered by it and, as agreed by the parties, may include a project plan, details of any Customer dependencies, project management details, a change management process, an acceptance procedure and details of any Deliverables to be supplied by Invenias to the Customer. The Professional Services Specification must be agreed and signed by the parties prior to the commencement of the Professional Services or the supply of any

Deliverables by Invenias to the Customer. Each agreed Professional Services Specification shall form part of this Agreement.

- 5.3 Invenias shall provide the Professional Services and supply the Deliverables in accordance with the terms of the Agreement including any applicable Professional Services Specification. Invenias shall use reasonable endeavours to provide the Professional Services and Deliverables (if any) by any estimated dates detailed in the Order Form or relevant Professional Services Specification. For the avoidance of doubt, unless specified otherwise, any dates will be estimates only.

6. Invenias Property

- 6.1 As between the parties, Invenias retains all right, title and interest, including without limitation all patent, copyright, trademark, trade secret, database rights and other intellectual property and proprietary rights, in and to (i) the Services (including the Software, in object code and source code form) and the Documentation, (ii) any Deliverables furnished by Invenias to the Customer as part of the Professional Services, and (iii) any and all improvements, modifications, translations and derivative works of any of the foregoing (collectively, "**Invenias Property**").

- 6.2 The Customer does not acquire any right, title or interest in or to Invenias Property except as expressly set out in this Agreement.

- 6.3 Upon payment in full of all amounts due for the Professional Services, the Customer is granted a non-exclusive, non-transferable license, for the duration of the term of the Agreement, to use any Deliverables furnished by Invenias to Customer as part of the Professional Services solely with, and in connection with Customer's internal business use.

- 6.4 For each User, the Customer may install and activate the Software on up to a maximum of five operating system environments for the exclusive use of a particular User. Certain operating system environments may require the User to accept their terms and conditions before the relevant software or applications can be downloaded for use. Once the Software is installed on any of these devices, the device shall be considered a Licensed Device.

- 6.5 The Customer shall not:

- 6.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

- (a) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software (and shall not exercise any legal right to carry out such actions without first requesting any information required for the purpose of creating interoperable software from Invenias);

- 6.5.2 access all or any part of the Services and/or Documentation in order to build a product or service which competes with the Services; or

- 6.5.3 use the Services and/or Documentation to provide services to third parties other than as may be expressly permitted in this Agreement; or

- 6.5.4 subject to clause 16.2, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise attempt to obtain, or assist third parties (excluding Users), access to the Services and/or Documentation other than as provided under clause 3.

- 6.6 Invenias shall defend the Customer, its officers, directors and employees against any claim that the Services and the Documentation infringes any United Kingdom, EU or USA patent effective as of the Effective Date, copyright, trade mark or database right, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 6.6.1 Invenias is given prompt notice of any such claim;

- 6.6.2 the Customer provides reasonable co-operation to Invenias in the defence and settlement of such claim, at Invenias' expense; and
- 6.6.3 Invenias is given sole authority to defend or settle the claim.
- 6.7 In the defence or settlement of any claim, Invenias may procure the right for the Customer to continue using all or part of the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 6.8 In no event shall Invenias, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 6.8.1 a modification of the Services or Documentation by anyone other than Invenias; or
 - 6.8.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Invenias; or
 - 6.8.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Invenias or any appropriate authority.
- 6.9 Subject to clauses 14.2 and 14.3, the foregoing states the Customer's sole and exclusive rights and remedies, and Invenias' (including Invenias' employees, agents, sub-contractors and Affiliates') entire obligations and liability, for infringement of any patent, copyright, trade mark or database right.

7. Open Source Software and Third Party Software

- 7.1 The Customer acknowledges that certain "free" or "open source" based software (the "**Open Source Software**") and certain third party software (the "**Third Party Software**") may be distributed, embedded or bundled with the Software and may be required to be licensed direct to the Customer rather than as part of the Software. A list of the Open Source Software and Third Party Software is set out on the webpage located at www.invenias.com/thirdpartyterms. The Customer's use (and any User's use) of such Open Source Software and Third Party Software is subject to the terms of the licenses set out on this webpage from time to time.

8. Customer Data and Data Processing

- 8.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data, including ensuring that it is permitted to provide the Customer Data to Invenias for processing as permitted by this Agreement. The Customer warrants to Invenias that where it supplies personal data (as defined in clause 8.6 below) to Invenias for processing pursuant to this Agreement, it has appropriate consents, including the consent to use location information, from the individuals concerned to enable Invenias to carry out the Services in accordance with the terms of the Agreement. The Customer grants Invenias, its Affiliates and sub-contractors a non-exclusive, non-transferable license to use the Customer Data in any manner necessary in connection with the provision of the Services. The Customer acknowledges and agrees that for the purposes of the performance and improvement of the Services, Invenias may collect and analyse anonymised Customer Data for application performance and service usage analysis.
- 8.2 The Customer shall defend, indemnify and hold harmless Invenias and its directors, employees, agents, sub-contractors and Affiliates against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with use of the Customer Data in accordance with the Agreement. This indemnity shall not be subject to the limits or exclusions of liability set out in the Agreement. Invenias shall ensure:
 - 8.2.1 the Customer is given notice of any such claim;
 - 8.2.2 Invenias provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 8.2.3 the Customer is given authority to defend or settle the claim (provided that any settlement must be approved by Invenias (such approval will not be unreasonably withheld)).

- 8.3 The maximum disk storage space provided to the Customer at no additional charge shall be set out in the Order Form. If the amount of disk storage exceeds these limits Invenias will notify the Customer and subject to such notice the Customer will be required to pay the applicable fee for any additional storage required.
- 8.4 Invenias shall, in providing the Services, comply with its Privacy Policy. The Customer acknowledges that the nature of the Services is such that Invenias must be permitted to modify the Privacy Policy from time to time. If Invenias modifies the Privacy Policy, Invenias shall notify the Customer through the Invenias Platform or by email.
- 8.5 In the remainder of this clause 8, the terms "controller", "processor" and "personal data" will bear the meanings given to them in European Union Directive 95/46/EC
- 8.6 To the extent that Invenias processes personal data about any living individual (**Personal Data**) in the course of providing the Services, it will do so only as a data processor acting on behalf of the Customer (as data controller) and in accordance with the requirements of its Privacy Policy and this Agreement.
- 8.7 Invenias shall:
- 8.7.1 only carry out processing of any Personal Data on the Customer's lawful instructions;
 - 8.7.2 process the Personal Data only for the purpose of providing the Services; and not divulge the whole or any part of the Personal Data to any person, except to the extent necessary for the proper performance of this Agreement or otherwise in accordance with the Customer's lawful instructions; and
 - 8.7.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and accidental loss or damage.
- 8.8 Invenias shall:
- 8.8.1 subject to clause 8.9 below, not subcontract any processing of the Personal Data without the prior written authorisation of the Customer;
 - 8.8.2 ensure that access to the Personal Data is limited to those employees or authorised sub-contractors who need access to the Personal Data to meet Invenias' obligations under this Agreement and that all employees and authorised sub-contractors are informed of the confidential nature of the Personal Data;
 - 8.8.3 comply with its obligations under any applicable Data Protection Law;
 - 8.8.4 promptly notify the Customer in writing of any notices in connection with the processing of any Personal Data, including subject access requests, and, at the Customer's expense, provide such information and assistance as the Customer may reasonably require; and
 - 8.8.5 promptly notify the Customer in writing if any Personal Data has been disclosed in non-compliance with this clause 8 and do all such acts and things as the Customer considers reasonably necessary in order to remedy or mitigate the effects of such disclosure.
- 8.9 The Customer acknowledges and authorises the storage of Personal Data on servers located at third party facilities provided by companies under contract to Invenias. For the purposes of the provision of the Services, the Customer authorises the processing of Personal Data by any Affiliate of Invenias and by selected sub-contractors under contract to Invenias. The sub-contractors providing services to Invenias are listed on the Invenias Help Centre.
- 8.10 The Customer acknowledges and agrees that the provisions of the Privacy Policy apply to any Personal Data which may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out the Services and Invenias' other obligations under this Agreement. The applicable provisions in the Privacy Policy depend on the services purchased by the Customer pursuant to the Order Form.
- 9. Additional Functionality Interfaces**
- 9.1 The Customer acknowledges that the Services provide certain capabilities to interface with and facilitate access to certain third party applications and services ("**Third Party Functionality**"). The

Customer agrees and acknowledges that the Customer uses such Third Party Functionality entirely at its own risk. Invenias makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence/interaction with, any such Third Party Functionality. The Customer's use of, or correspondence/interaction with any such Third Party Functionality and any data or content available from such applications or services is governed by any applicable third party own terms and conditions with the Customer. The Customer is responsible for ensuring it has any and all rights and permission to use the same and shall be responsible for and shall instruct and control its Users accordingly.

- 9.2 Third Party Functionality does not form a part of the Services and Invenias cannot ensure nor guarantee continued interoperability or availability. Access may cease at any time. Invenias does not endorse or approve any third-party application and makes no warranty or representation in respect of the functionality of any third party application made available via the Services.

10. Invenias Warranties

- 10.1 Invenias warrants that:

- 10.1.1 the provision of the Invenias Cloud and the Support Services will be performed with reasonable skill and care;
- 10.1.2 the Software will perform substantially as described in the Documentation for a period of 90 days from the time it is made available by Invenias to the Customer for download provided that the Customer has complied with its obligations under clause 11.1.5; and
- 10.1.3 the Professional Services will be performed with reasonable skill and care and the Deliverables will perform in accordance with their specification as set out in the Order Form or Professional Services Specification as applicable for a period of 90 days from the Start Date or, where the Customer is already using the Invenias Platform, from the date of delivery of each Deliverable.

These warranties shall not apply to the extent that any non-conformance is caused by use of the Services contrary to Invenias' instructions, or modification or alteration of the Services by any party other than Invenias or its duly authorised contractors or agents.

- 10.2 Invenias' sole and exclusive liability:

- 10.2.1 if the Invenias Cloud does not conform with the warranty in clause 10.1.1, is for Invenias to use all reasonable commercial endeavours to correct any such non-conformance promptly;
- 10.2.2 if the Support Services do not conform with the warranty in clause 10.1.1, is for Invenias to correct such non-conformity in accordance with the provisions of the Support Services Policy;
- 10.2.3 if the Software does not conform with the warranty in clause 10.1.2, and provided that the Customer has given written notice of such defect or fault (including information that may be necessary to assist Invenias in identifying and resolving such defect or fault), shall, in Invenias' sole discretion, be to either repair or replace the Software or to provide the Customer with a work around which provides the performance as described in the Documentation; and
- 10.2.4 for any failure of the Professional Services to conform to the undertaking in clause 10.1.3 shall be for Invenias to correct or re-perform the non-conforming Professional Services.

The provisions in this clause 10.2 constitute the Customer's sole and exclusive remedy for any breach of the warranties set out in clause 10.1.

- 10.3 Invenias shall comply with all applicable laws and regulations with respect to its activities under this Agreement.

- 10.4 Except as expressly set out in this Agreement:

- 10.4.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from

such use. Invenias shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Invenias by the Customer in connection with the Services, or any actions taken by Invenias at the Customer's direction;

10.4.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

10.4.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

10.5 For the avoidance of doubt, Invenias:

10.5.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services, Deliverables, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

10.5.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Deliverables and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.6 Invenias shall not be responsible for any delay caused by the Customer or any third party under contract with the Customer.

11. Customer Obligations

11.1 The Customer shall:

11.1.1 provide Invenias with:

(a) all necessary co-operation in relation to this Agreement (including following all reasonable instructions and procedures given by Invenias relating to the Services); and

(b) all necessary access to such information as may be required by Invenias

in order to provide the Services, including Customer Data, security access information and Customer Materials;

11.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

11.1.3 where appropriate, use an up-to-date Virus scanning program on any Licensed Device or any other device through which it accesses the Invenias Platform;

11.1.4 obtain and shall maintain all necessary licenses, consents, and permissions necessary for Invenias, its contractors and agents to perform their obligations under this Agreement;

11.1.5 ensure that its network and systems together with any equipment, software and communication lines required for the Customer to use the Invenias Platform meet the minimum system requirements available on the Invenias Help Desk and any Customer specific system requirements necessary to use the Invenias Platform; and

11.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Invenias Cloud, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11.2 The Customer shall comply with the terms of the Order Form and any relevant Professional Services Specification and shall promptly provide Invenias with all assistance (including Customer dependencies and information) required by Invenias in respect of the performance of the Professional Services. The Customer warrants that any such information shall be accurate to the best of the Customer's knowledge and belief. The Customer acknowledges that if it does not

comply with its obligations under this clause, Invenias may not be able to perform the relevant Professional Services and supply the Deliverables as specified in the Order Form or any relevant Professional Services Specification and will have no liability in respect thereof.

- 11.3 The Customer shall at no extra cost to Invenias provide Invenias (and Invenias' personnel) with safe access to appropriate office accommodation and facilities as required to enable Invenias to perform the Professional Services.

12. Fees

12.1 Fees

12.1.1 The Fees for the services provided by the Invenias Platform for the initial license term shall be as set out in the Order Form and shall commence from the Start Date. The Fees for the Invenias Platform shall increase by 2.5% for each new license renewal term. Invenias may increase the Fees by a different amount for each renewal term by giving no less than sixty (60) days' notice to the Customer and any increase shall only be effective from the date of the renewal term.

12.1.2 Where the Customer adds additional User Licenses to this Agreement in accordance with clause 3.3, the Customer shall be billed for such User Licenses from the date of purchase until the end of the Term in accordance with the payment terms set out in the Order Form.

12.1.3 If the Customer's use of the Invenias Platform exceeds the scope of use agreed in this Agreement at any time, including by permitting more than the agreed number or type of Users to access the Invenias Platform, then the Customer shall pay additional Fees on demand calculated by the number of additional Users, their type and the Products they are using multiplied by the then-current Invenias list price for the relevant Products for the full initial license term and/or renewal term (as applicable).

12.1.4 Fees for Professional Services or any other Services shall be as set out in the Order Form. Where certain Professional Services are to be billed on a time and materials basis, they shall be billed at the rates set out in the Order Form or Professional Services Specification. The Fees for Professional Services shall be adjusted in the event the scope of service changes. The Customer shall reimburse Invenias for actual and verifiable out-of-pocket expenses (including travel and related expenses) reasonably incurred by Invenias in connection with the Professional Services.

12.2 Invoices

12.2.1 Subject to the terms of a relevant Order Form, Invenias shall invoice the Customer for Fees for the Invenias Platform annually, quarterly or monthly in advance on the first day of the relevant period, or such other day in the period as Invenias may select.

12.2.2 Where a Customer adds new Users to the Online Service during the course of a billing period, the Customer shall be charged Fees for such Users in accordance with clause 12.1.2 and may be invoiced part in arrears and part in accordance with clause 12.2.1 in respect of such Users.

12.2.3 Invenias shall invoice the Customer for Fees for the Professional Services and any other Services in accordance with the terms of the Order Form or on completion of each Deliverable if not specified.

12.3 Payment

12.3.1 All invoices in respect of Fees for the Invenias Platform are due and payable within fifteen (15) days from the date of invoice, in the currency specified in the applicable Order Form. All invoices in respect of Fees for the Professional Services or any other Service are due and payable within thirty (30) days from the date of invoice, in the currency specified in the applicable Order Form. All payments shall be made in full (without deduction or set-off) by direct debit or to the credit of a bank account designated by Invenias in the Order Form.

12.3.2 If the Customer fails to make payment on the due date, interest shall accrue on a daily basis on the unpaid amount at a rate equal to 3% per annum above the base rate of

HSBC Bank PLC from time to time, commencing on the due date and continuing until fully paid.

12.3.3 If the Customer fails to make payment on the due date, without prejudice to any other right or remedy available to Invenias, in respect of such failure, Invenias may, at its option:

- (a) suspend access (including all User access) to the Invenias Platform until payment of the due amount (including any interest accrued in accordance with clause 12.3.2) has been received; or
- (b) upon giving thirty (30) days' written notice to the Customer, terminate this Agreement.

12.3.4 All prices quoted to the Customer are quoted exclusive of amounts in respect of value added tax chargeable for the time being (VAT) or any other applicable local sales taxes, which Invenias shall charge and the Customer shall pay. The Customer shall be responsible for all taxes, charges and duties applicable to each transaction, including without limitation any sales, use, value added, customs, excise, withholding and similar taxes and duties imposed by any government entity (including any federal, state, provincial or local government entity), excluding taxes based on Invenias' net income.

13. Confidentiality

13.1 Each party agrees that, for a period of five (5) years from receipt of any Confidential Information hereunder, it shall:

13.1.1 use such Confidential Information only for the purpose for which it was provided by the disclosing party ("**Purpose**");

13.1.2 maintain such Confidential Information in confidence and not disclose it except to its employees, affiliates, contractors, sub-contractors, consultants or advisors ("**Representatives**") who have a need to know such Confidential Information for the Purpose, provided that:

- (a) such Representatives are bound by written obligations consistent with the provisions of this clause 13;
- (b) the receiving party shall be responsible for any breach by its Representatives; and
- (c) use the same degree of care as it uses to protect its own confidential information of a similar nature, but not less than reasonable care.

13.1.3 The Customer agrees that the Services (including without limitation their design, layout, architecture and code), Documentation, feedback and Deliverables shall be deemed and treated as the Confidential Information of Invenias in perpetuity, regardless of the applicability of any exceptions in clause 13.2, and the Customer shall implement reasonable security measures in accordance with good industry practice to protect the same.

13.2 The obligations under clause 13.1 will not apply with respect to information that the receiving party can demonstrate:

13.2.1 was in its possession at the time of receipt hereunder, without any obligation of confidentiality with respect thereto;

13.2.2 is or becomes generally available to the public through no breach of clause 13.1 by the receiving party or its Representatives;

13.2.3 following receipt hereunder, is received from a third party under no duty of confidentiality; or

13.2.4 is independently developed by or for the benefit of the receiving party without use of or resort to Confidential Information of the disclosing party.

13.3 The receiving party may disclose Confidential Information to the extent required to comply with applicable law or judicial or governmental order or process, provided that the receiving party, to the extent legally permitted, promptly notifies the disclosing party in writing, and in advance, of

such required disclosure and reasonably cooperates with the disclosing party, at the disclosing party's expense, in its efforts to limit such disclosure or obtain a protective order or other confidential treatment with respect thereto.

14. Limitation on Liability

14.1 Nothing in this Agreement shall limit or exclude either party's liability for (a) death or personal injury caused by its negligence, or the negligence of its Affiliates, employees, agents or sub-contractors; (b) fraud or fraudulent misrepresentation; or (c) any other liability that cannot be excluded or limited by law.

14.2 To the maximum extent permitted by law and subject to clause 14.1, in no event shall Invenias or its Affiliates, licensors, sub-contractors or other suppliers be liable to the Customer (or any person claiming under or through the Customer) for any:

14.2.1 lost business or lost revenues;

14.2.2 lost profits;

14.2.3 loss of goodwill;

14.2.4 loss of anticipated savings;

14.2.5 business interruption;

14.2.6 loss of business information; or

14.2.7 any special, incidental, indirect, punitive, exemplary or consequential damages,

regardless of the form of action, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with this Agreement, including without limitation the use of or inability to use or access the Service, even if advised of the possibility of such damages.

14.3 To the maximum extent permitted by applicable law and subject to clauses 14.1 and 14.2, in no event shall Invenias and its Affiliates' maximum aggregate liability under or in connection with this Agreement (and any applicable Order Form), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, exceed:

14.3.1 with respect to the Invenias Platform, a sum equal to the Fees payable by the Customer for the Invenias Platform during the 12 month period when the claim arose; and

14.3.2 with respect to the Professional Services, the amount equal to the Fees payable for such services pursuant to the applicable Order Form.

14.4 For the avoidance of doubt, Invenias shall not be responsible for any loss, damage, costs, expenses or other claims of the Customer or any User or any third party resulting from the suspension of access to the Invenias Platform in accordance with clauses 3.8 or 12.3.3(a).

15. Term and Termination

15.1 Term of the Agreement

15.1.1 The term of this Agreement shall commence on the Effective Date and continue until terminated by either party in accordance with the termination rights set out in this clause.

15.2 Invenias Platform Term and Renewal

15.2.1 The term of access to the Invenias Platform shall commence on the Start Date and shall continue for the initial license term specified in the applicable Order Form, unless terminated earlier in accordance with this Agreement. If no initial license term is indicated in an applicable Order Form, the initial term shall be one year. The license term shall automatically renew for consecutive one-year periods unless either party delivers written notice to the other party of its intent not to renew the license term at least thirty (30) days prior to the end of the initial license term or then-current renewal term.

15.3 Termination

15.3.1 Either party may terminate this Agreement or an individual Professional Services Specification:

- (a) upon fourteen (14) days prior written notice if the other party has materially breached this Agreement, and failed to cure such breach within such period; or
- (b) immediately upon written notice if:
 - (i) the other party becomes insolvent or makes a voluntary arrangement with its creditors;
 - (ii) a petition is filed, a notice is given, a resolution is passed or an order is made or a party has a petition or order filed against it, under any applicable laws relating to bankruptcy, administration, liquidation, insolvency or in connection with the winding up of that other party;
 - (iii) the other party ceases or threatens to cease to carry on business in the ordinary course; or
 - (iv) any event occurs, or proceeding is taken, with respect to the other party (in any jurisdiction) that has equivalent or similar effect to any of the events mentioned in clause 15.3(b) (i) to (iii)(inclusive).

15.3.2 Invenias may terminate this Agreement if a controlling interest in the Customer is acquired by another party who is deemed by Invenias to be a direct competitor of Invenias.

15.4 Effect of Termination

15.4.1 On termination of this Agreement, all User Licenses and Product Licenses granted pursuant to this Agreement shall immediately terminate.

15.4.2 Termination of this Agreement shall also automatically terminate all Professional Service Specifications. Termination of an individual Professional Services Specification will not automatically terminate this Agreement or any other Professional Services Specification.

15.4.3 On termination of this Agreement, and/or any Professional Services Specification, all payment obligations incurred by the Customer through to the effective date of termination shall survive and be payable in accordance with their payment terms.

15.4.4 On termination of this Agreement, each party shall destroy and certify the destruction of, all of the other party's Confidential Information and all copies thereof in its and its Affiliates' possession. Upon termination of any Services, the Customer shall destroy and certify the destruction of all copies of the Software and Documentation in the Customer's, its Affiliates' or any third party's possession.

15.4.5 On termination of this Agreement, Invenias will retain Customer Data stored in the Invenias Cloud for a period of 60 days after the termination date so that the Customer may extract the Customer Data. After the 60 day retention period ends, the Customer's account will be disabled and Invenias will delete the Customer Data.

15.4.6 The obligations of the parties under clauses that are of a continuing nature and capable of surviving termination of this Agreement shall continue in full force and effect notwithstanding such termination.

16. General

16.1 Notices

16.1.1 All notices required under this Agreement shall be in writing and delivered personally or sent by certified, registered or express mail (return receipt requested, postage prepaid) or internationally recognized overnight delivery service which tracks receipt, or by email, and shall be deemed given upon personal, confirmed or documented delivery. Notices shall be provided to the Customer at its address specified in the Order

Form and to Invenias at the address in the Order Form. Alternatively, Invenias may give notice by communicating using the Services.

16.1.2 Either party may, by written notice to the other, designate another address for receipt of notices.

16.2 Assignment

16.2.1 Neither party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

16.3 No Third Party Beneficiaries

16.3.1 The Customer acknowledges that certain licensors of third party software distributed to the Customer hereunder are direct and intended third party beneficiaries of this Agreement and are entitled to enforce their agreements directly against Customer. In no event shall Invenias' licensors be deemed parties to this Agreement and neither the Customer nor any third party including Affiliates shall have a right to raise claims pursuant to this Agreement against such third party licensors. Nothing in this Agreement shall be construed as giving any right, remedy or claim under this Agreement to any other person or entity who is not a party to this Agreement.

16.4 Force Majeure

16.4.1 Except for obligations to make payments hereunder, neither party will be liable for any delay or non-performance of its obligations under this Agreement caused by circumstances beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, acts of terrorism, fires, floods, severe storm, failure of the Internet or other supplies or otherwise.

16.5 Entire Agreement; Conflict; Amendment; Waiver; Severability

16.5.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersedes all prior oral or written agreements, representations, understandings, arrangements or communications between the parties, with respect to the subject matter hereof.

16.5.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16.5.3 Any failure or delay by a party to enforce or exercise any rights or remedy under this Agreement or by law shall not be deemed a waiver of any other right or remedy.

16.5.4 If a court of competent jurisdiction determines that any term or provision of this Agreement is illegal or unenforceable in whole or in part, such term or provision shall to that extent not be deemed to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

16.6 Governing Law and Jurisdiction

16.6.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Standard Support Services

1. Invenias will provide its standard support services for the Invenias Cloud and the Software to the Customer in accordance with the Invenias Support Services Policy and on the following terms:
 - (a) remotely via telephone or other remote access service as specified in the Invenias Support Services Policy;
 - (b) in the English language only; and
 - (c) during the Support Hours only, which are from 0900 Monday Sydney, Australia time to Friday 1800 Pacific, USA time excluding Recognised Holidays.
2. Invenias' support services may be accessed:
 - (a) by Customer Users only and certain services may only be accessed by the Customer's named Customer Administrator;
 - (b) by the methods set out in the Invenias Support Policy.
3. In order to be eligible for Invenias Support Services, the Customer's computer hardware, operating systems, network and communications channels (including internet speed and connectivity) must meet the Invenias current recommended specification available at the Invenias Help Centre.
4. Invenias will support the Invenias Cloud and the Software. The Customer is responsible for all and any issues concerning its PCs, operating systems, network or communications channels (including internet speed and connectivity).
5. Invenias reserves the right to charge the Customer at its then current rates for the provision of Professional Services for any Support Services provided to the Customer outside of the parameters of this Schedule.
6. Invenias will respond to requests for Support Services made in accordance with the terms of this Schedule and the Invenias Support Services Policy on the following basis:

PROBLEM CLASS	DEFINITION	RESPONSE TIME (Support Hours)
1 – CRITICAL	A problem has occurred where the Invenias Platform has completely stopped functioning and all Users are unable to work; or where a substantial portion of Customer Data is at a significant risk of loss or corruption; or that compromises overall system integrity or data integrity (i.e. causing a system crash, loss or corruption of data) and significantly impacts operations in a production environment, and where no workaround is immediately available.	1 hour
2 – HIGH	A problem has occurred where major functionality is severely impaired. Operations can continue in a restricted fashion, although long-term productivity might be adversely affected, and where no workaround is immediately available.	8 hours
3 – NORMAL	A problem has occurred where there has been a limited adverse effect on business operations, or where a workaround is available	48 hours
4 – LOW	A problem has occurred where business operations have not been adversely affected; or a minor condition or documentation error that has no significant effect on operations; or a suggestion for new features or enhancements.	Within 5 days

Invenias aims to resolve all support requests as quickly and efficiently as possible, however some problems may require a software upgrade. Where a software upgrade is required, Invenias will inform the Customer of the planned timescales for any such release (if planned). Where the problem will not be resolved by issue of an upgrade or where there are no plans to issue an upgrade, Invenias will provide advice to the Customer as to the nature of the problem and how it might be worked around.

Without prejudice to the provisions contained above, Invenias will use its best endeavours to meet the response criteria defined above. Invenias makes no commitment that it will be able to meet these criteria or that it will be able to resolve every problem of the Customer

Schedule 2 Mobile Save to Invenias Special Terms

The Special Terms set out below apply to all orders for or decisions to utilise the Invenias Product: "Mobile Save to Invenias". The terms set out in this Schedule 2 constitute Special Terms and shall be viewed as such in the event of any conflict between the documents forming part of the Agreement.

1. The Mobile Save to Invenias Product is an optional service offered by Invenias to the Customer in consideration of the periodic Fees payable by the Customer to Invenias for Invenias Professional during the Term. Mobile Save to Invenias is provided to the Customer free of charge.
2. Invenias uses services provided by its sub-contractors: SendGrid Inc., Microsoft Azure and Barracuda Networks to provide Mobile Save to Invenias and all emails sent by Customer and Users using Mobile Save to Invenias will pass through and may be temporarily stored in Invenias' sub-contractor's data centres in the United States. Invenias shall comply with its Privacy Policy in providing Mobile Save to Invenias.
3. Notwithstanding anything in the Privacy Policy, Invenias' sub-contractors have the right to collect, extract, compile, synthesize, and analyse non-personally identifiable data or information (data or information that does not identify an entity or natural person as the source thereof) resulting from use of Mobile Save to Invenias (including, by way of example and not limitation, information relating to volumes, frequencies, recipients, bounce rates, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis or any other information regarding the email and other communications generated and sent using Mobile Save to Invenias). To the extent any such non-personally identifiable data or information is collected or generated by Invenias' sub-contractors, the data and information will be solely owned by such sub sub-contractors and may be used by them for any lawful business purpose, provided that the data and information is used only in an aggregated form, without directly identifying Customer, any User, or any other entity or natural person as the source.
4. Emails sent to Invenias using Mobile Save to Invenias will be held in their component parts in a multi-tenanted holding database pending User verification and confirmation to save the email to the Customer's database.
5. As Mobile Save to Invenias is provided to the Customer free of charge, it is provided on an "as is" and "as available" basis and Invenias reserves the right, in its sole discretion, to update, change, revise, suspend or discontinue Mobile Save to Invenias (or any part of it) at any time without liability to the Customer. The minimum availability provisions in clause 4.5 of the Invenias Service Terms and Conditions do not apply to Mobile Save to Invenias.