

Inoapps Limited

CLOUD SERVICES AGREEMENT

Agreement Number

This Agreement is made this Day _____ of _____ 20__ between:

Inoapps Limited (Co. No. SC280651)	[] (Co. No. [])
2 Fountainhall Road	[Insert Address]
Aberdeen	
AB15 4DT	
("Inoapps")	("the Customer")

In consideration of the Customer agreeing to pay to Inoapps the Charges in accordance with this Agreement, Inoapps agrees to provide to the Customer the Services and/or Products referred to in the Schedules upon the general terms and conditions of this Agreement.

For and on Behalf of Inoapps Limited

For and on Behalf of []

Authorised signature and date:

Authorised signature and date:

Signature:

Signature:

Name (print):

Name (print):

Date:

Date:

INOAPPS GENERAL TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (unless the context otherwise requires) capitalised terms are defined in Schedule 1.

1.2 In the event of any conflict or inconsistency between the provisions of any of the constituent parts of this Agreement the provisions of such constituent parts shall be construed in the following order of precedence, to the extent of such conflict or inconsistency:

- Specific Implementation & Support terms;
- General terms of this Agreement;
- Schedule(s);

1.3 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

1.4 References to Inoapps Limited or Inoapps in this Agreement shall include its legal successors and permitted assignees.

1.5 The construction and interpretation of this Agreement shall not be affected by any heading

1.6 In this Agreement all agreements on the part of any of the Parties to the Agreement which comprise more than one person or entity shall be joint and several.

1.7 Any reference to the Parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees and any reference to a person includes anybody corporate, unincorporated association, partnership or any other legal entity.

1.8 In this Agreement words denoting the singular shall include the plural and vice versa.

2 INOAPPS OBLIGATIONS

2.1 Inoapps shall provide the Services referred to in the Statement of Work in accordance with any applicable targeted Service Levels.

2.2 Inoapps shall use reasonable skill, care and diligence when providing the Services in accordance with Good Industry Practice and its own established internal procedures.

2.3 Notwithstanding clauses 2.1 and 2.2, Inoapps does not warrant that the Services shall be free from Service Failures.

2.4 Inoapps has full capacity and authority to enter into this Agreement and shall obtain all approvals and consents where necessary for the fulfillment of its obligations under this Agreement.

- 2.5 Inoapps shall perform the services in compliance with all relevant legislation, regulations, codes of practice, and other requirements of any relevant government or governmental agency or authority.
- 2.6 Inoapps shall, if a Service Failure causes any applicable Service Level not to be achieved, notwithstanding any other provision in this Agreement, arrange all such additional resources as are reasonably necessary and shall take all reasonably necessary remedial action to correct such failure. Inoapps will identify the actions taken and implemented to ensure, where possible, such occurrences are not repeated.
- 2.7 Inoapps shall ensure that all persons engaged in the provision of the Services shall:
- (a) comply with all applicable health, safety, security and other office procedures and regulations notified to the Inoapps by Customer from time to time;
 - (b) be appropriately qualified and experienced to undertake their tasks and shall use professional skill and care of the highest standard in the provision of the Services; and
 - (c) comply at all times with the obligations of confidentiality set out in Agreement.
- 2.8 Inoapps shall where necessary perform the services against the identified acceptance criteria and procedures set out in the Statement of Work or Statement of Work.
- 2.9 Inoapps shall nominate a duly skilled, competent and empowered representative to liaise and manage the relationship envisaged by this Agreement.
- 2.10 Inoapps will report to the Customer such management and performance reporting of the content and format and at the frequencies and on the dates as specified in this Agreement
- 2.11 INOAPPS does not warrant that operation of the Deliverables will be uninterrupted or error free.
- 2.12 INOAPPS does not warrant the performance of any Third Party Software purchased as part of the agreed Services and is not responsible for fixing any bugs, errors or omissions in the Third Party Software. INOAPPS is not responsible for any delays in the project caused by Third Party Software and where a delay occurs because of bugs, errors or omissions in the Third Party Software undisputed charges will still be due in accordance with the agreed Payment Milestones in the Payment.

3 THE CUSTOMER'S OBLIGATIONS

- 3.1 The Customer will provide Inoapps (free of charge) such co-operation, information, facilities, materials and access as is reasonably required from time to time, for Inoapps to provide the Services as is expressly set forth in this Agreement and the Statement of Work.
- 3.2 The Customer agrees to make available to the Inoapps, access to staff of the Customer who are familiar with the Customer's systems and software which will be subject to the Services.
- 3.3 The Customer shall take all reasonable precautions to protect the health and safety of Inoapps employees, agents or sub contractors while at the Customer's premises.
- 3.4 Customer shall not require that the Inoapps Personnel perform the Services at the Customer's premises if to do so would endanger their safety in any way. If Customer is informed of any safety issue at a Customer's premises it shall be responsible for rectifying the problem as soon as possible.
- 3.5 The Customer acknowledges that the Services are provided to the Customer in the course of the Customer's business and warrants that it has full power and authority to enter into this agreement.
- 3.6 The Customer agrees that it shall not use the Services, in a manner that is likely to:
- (a) contravene any laws or regulations including, without limitation, the Computer Misuse Act 1990;
 - (b) compromise the security and/or integrity of the network or other systems including, but without limitation, introducing viruses or failing to employ appropriate security procedures (other than to the

- extent that such security procedures are specifically to be provided by Inoapps pursuant to the Services);
- (c) involve the sending of unsolicited marketing or advertising materials;
 - (d) result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or which would result in the breach of any third party's Intellectual Property Rights, Confidential Information or privacy;
 - (e) breach or cause Inoapps to breach any applicable data protection legislation including but not limited to the Data Protection Act 1998.
- 3.7 Where any work or Services are to be carried out at the CUSTOMER's premises then the CUSTOMER shall, subject to compliance by INOAPPS personnel with CUSTOMER's reasonable security requirements, allow INOAPPS sufficient access to the area(s) where Service(s) are to be performed and will provide suitable office accommodation and facilities for any INOAPPS staff working on its premises as required for INOAPPS to perform the Services.
- 3.8 The Customer is responsible for the integrity of the data provided to Inoapps for, but not limited to, a migration and for data cleaning and for all direct consequences of any errors in such data and Inoapps will not warrant the integrity of that data. Inoapps does not warrant the integrity of the data following, but not limited to, a migration to the extent of any error that is the Customer's responsibility.
- 3.9 Inoapps shall promptly notify the Customer in writing of any delay or failure on the part of the Customer which Inoapps considers will or is likely to impact on the ability of Inoapps to comply with its obligations under this Agreement, [at a frequency to be determined by the Project Managers at the commencement of the Project.](#)
- 3.10 The Customer shall nominate a duly skilled, competent and empowered representative to liaise and manage the relationship envisaged by this Agreement.

4 CHARGES AND PAYMENT

- 4.1 The Customer shall pay Inoapps the Charges as specified in the Payment Schedule.
- 4.2 The Charges shall be fixed for the Initial Period, as defined in each Statement of Work. At the completion of each Statement of Work Inoapps may change the Charges for any Service by giving the Customer one month's notice of such change provided that the percentage increase in such Charges does not exceed the percentage increase in the UK Retail Prices Index plus 4% in the 12 months preceding such notice being given by Inoapps.
- 4.3 Where necessary the Customer shall be liable for all third party call charges and other expenses, which it incurs in using the Services as set out in Clause 33 of this Agreement.
- 4.4 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer will be responsible for paying VAT and other applicable taxes that will be included in Inoapps invoices at the applicable rate(s).
- 4.5 The Charges, as specified in the Payment Schedule, are payable within 30 days of the invoice date. Inoapps may exercise its rights to charge interest and be entitled to compensation for debt recovery costs in respect of the late payment of any sum due under these terms. In addition, Inoapps may suspend further provision of the Services, without liability, until payment in full is received.
- 4.6 In the event that the Customer (acting reasonably) considers that the Charges as detailed in any invoice submitted by Inoapps have not been correctly calculated and/or that the invoice in question contains any error or inaccuracy then the Customer shall notify Inoapps of that and the parties shall then work together to resolve the issues raised by the Customer (and should the parties fail to reach resolution then the Dispute Resolution Procedure shall apply). Where the Customer disputes only part of an invoice then Inoapps shall issue a credit note and raise a replacement invoice for the undisputed amount which shall have the same date as the original invoice and shall then be paid by the Customer in accordance with Clause 4.5; once resolution has been reached regarding the disputed amount of any invoice then Inoapps shall issue an invoice for the agreed

amount which shall then be paid by the Customer in accordance with Clause 4.5 (together with interest thereon calculated in accordance with Clause 4.7 if it is subsequently agreed or ruled that the Customer incorrectly disputed the original invoice and as a result of that, payment was delayed beyond the date on which the Customer should have paid the original invoice under Clause 4.5).

4.7 Any amount which is not the subject of a bona fide dispute and which is payable by CUSTOMER to INOAPPS under this Agreement which has not been paid in accordance with Clause 4.5 shall be deemed overdue and INOAPPS may, without prejudice to any other rights which it may have in respect of CUSTOMER's failure to pay amounts when due: (i) suspend the provision of the Services (or any part thereof) until payment is received in full; (ii) suspend the provision of any services provided to CUSTOMER (including without limitation any hosting services) pursuant to any other agreement between INOAPPS and CUSTOMER until payment under this Agreement is received in full; and/or (iii) require CUSTOMER to make a late payment charge. The aforementioned late payment charge will be calculated on a day to day basis from the date payment should have been made, until payment is received in full (together with interest) and such interest will be calculated at a rate of 4% above the applicable LIBOR rate for the time being in force during the period. CUSTOMER hereby acknowledges and agrees that the suspension of any services pursuant to (i) or (ii) above shall not:

- 4.7.1 suspend or absolve CUSTOMER of its obligations to make payments to INOAPPS or otherwise comply with any obligations under the applicable agreement; nor
- 4.7.2 be deemed a breach of the relevant agreement between INOAPPS and CUSTOMER and shall not entitle CUSTOMER to any remedy as against INOAPPS (whether at law or otherwise and including, without limitation, any service credits which might be available) in respect thereof.

4.8 The Customer shall pay the Charges by BACS or by any other method as agreed between the parties and payment of such Charges shall be made in full without any right of set off, deduction or withholding whatsoever.

5 THIRD PARTY SOFTWARE

5.1 The Customer is responsible for obtaining all required licences or other consents relating to any use of Third Party Software to enable Inoapps to deliver the Services as set out in the Statement of Work.

6 TERM AND START DATE

6.1 This Agreement will commence on the date when both parties have executed this Agreement and stated the Service Commencement Date and will continue for the Initial Period of 60 months, continuing thereafter until terminated in accordance with its terms. Charges, Services to be delivered and duration shall be identified in each Statement of Work. Customer may terminate in individual Statement of Work for convenience as set out in Clause 7.

6.2 Subject always to the Customer fulfilling its obligation to pay the Charges pursuant to clause 4, Inoapps shall begin providing each of the Services by the applicable Service Commencement Date.

6.3 Without prejudice to either party's rights under this Agreement the Customer agrees to receive each of the Services for the applicable Initial Period, which Initial Period shall automatically renew for further periods of 12 months duration ("**Further Periods**") unless either party gives to the other at least 3 months' notice in writing of its intention to cancel the provision or receipt (as the case may be) of such Services, such notice to expire at the end of the Initial Period or at the end of the then current Further Period.

7 TERMINATION

7.1 Either party ("**the Terminating Party**") may without prejudice to its other rights and remedies terminate an individual Statement of Work with immediate effect by notice in writing to the other party ("**the Defaulting Party**") if the Defaulting Party:

- (a) fails to pay any sums due to the Terminating Party by the Payment Due Dates.

- (b) is in material breach of that individual Statement of Work and such breach (if capable of remedy) is not remedied within 90 days of receiving a notice from the Terminating Party specifying the breach;
- (c) makes any voluntary arrangements with its creditors is the subject of a notice of appointment of an administrator, or notice of intention to appoint an administrator or liquidator, becomes subject to an administration order or goes into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation) becomes insolvent, ceases to or threatens to cease to carry on its business or an encumbrance takes possession of or a receiver is appointed in respect of its assets.

- 7.2 In the event of termination by Inoapps in accordance with clause 7.1 during the Initial Period or a Further Period, without prejudice to Inoapps other rights and remedies, the Customer shall pay to Inoapps any unpaid charges plus interest due as at the date of termination and any Charges which but for such termination, would have become due to Inoapps during such Initial Period or Further Period.
- 7.3 In the event of termination by the Customer in accordance with this clause 7.1 during the Initial Period or Further Period, Inoapps will refund to the Customer sums (calculated on a pro rata basis) paid by the Customer at the date of such termination which are attributable to the unexpired portion of the Initial Period or the Further Period (as the case may be).
- 7.4 Following termination of this Agreement the parties shall promptly deliver up to each other any materials or Confidential Information provided to the other party in connection with this Agreement.
- 7.5 Upon termination of this Agreement or cancellation of any Services Inoapps shall provide the Customer with such assistance as the Customer may reasonably require in order to allow the Customer to receive services similar to the Services no longer to be provided by Inoapps from an alternative service provider, provided always that the Customer pays to Inoapps all Charges due and payable pursuant to the Agreement and provided also that the Customer agrees to pay Inoapps then current charges for such Transitional Assistance.

8 CANCELLATION AND SUSPENSION

- 8.1 Where the Customer terminates the Agreement, other than as permitted pursuant to clauses 6.3 or 7 the Customer shall pay the Charges applicable to the unexpired portion of the applicable Initial Period or Further Period (as the case may be).
- 8.2 Without prejudice to clause 7, Inoapps may suspend or cancel the provision of any Services if:
 - (a) technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
 - (b) requested or required to do so by any governmental or other authority;
 - (c) the Customer fails to meet any of its obligations under this Agreement;
 - (d) if and to the extent that in Inoapps reasonable opinion the Customer's conduct is likely to result in the breach of any law or is otherwise prejudicial to Inoapps interests; (e) necessary for operational reasons such as emergency maintenance;
- 8.3 Inoapps shall, where practical, give the Customer notice of its intention to suspend or cancel the Services in accordance with clause 8.2 and, in relation to suspension for the reasons stated in clause 8.2 (a) (b) and (e) shall restore the Services as soon as it is reasonably able to do so. Inoapps shall not be obliged to restore the Services in the event that it has suspended the same pursuant to clause 8.2 (c) or (d) above, but, in the event that it agrees to do so, the Customer shall be liable for Inoapps costs and charges in respect of the suspension and restoration of the applicable Services.
- 8.4 Inoapps reserves the right to charge for scheduled Services which are cancelled by the Customer giving less than 10 working days written notice. Inoapps shall use reasonable endeavours to re-allocate resource onto other chargeable work to limit any potential cancellation charge.

9 CHANGE CONTROL

9.1 Where Inoapps or the Customer see a need to make a change to the Services, Service Levels, Charges or other terms of this Agreement (a "Change"). Either party may at any time request a Change, which shall be dealt with in accordance with the Change Control Procedure, set out in Schedule 6.

9.1.1 Neither party shall unreasonably withhold its agreement to any Change.

9.1.2 Until such time as Change is agreed between the Parties in accordance with this Change Control Procedure, then Inoapps shall, unless otherwise agreed in writing, continue to carry out the Services pursuant to this Agreement as if the request or recommendation for a Change had not been made.

9.2 Any discussions, which may take place between Inoapps and the Customer in connection with a request or recommendation for a Change, before the authorisation of the Change, shall be without prejudice to the rights of either Party or the terms of this Agreement.

10 CONFIDENTIALITY OF INFORMATION

10.1 Neither party will disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Agreement except to the extent that such third parties have a genuine need to know the same in connection with the provision or receipt of the Services. Each party shall procure that any third party to whom such party discloses such information shall use the same only for such purpose and shall not further disclose or use it. Both parties agree that any Confidential Information received from the other party will only be used for the purposes of providing or receiving Services. These restrictions will not apply to any information which:

- (a) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 100; or
- (b) is acquired from a third party who owes no obligation of confidence in respect of the information; or
- (c) is or has been independently developed by the recipient; or
- (d) is required by any court of competent jurisdiction or by a government or regulatory authority or, without limit, where there is a legal right, duty or requirement to disclose such information.

10.2 A Party (the "Receiving Party") shall indemnify and hold harmless the other Party (the "Disclosing Party") from any or all loss, liability, cost, expense, claim, demand or damage which may arise directly or indirectly from the unauthorised disclosure or use of any Confidential Information or the Disclosing Party by the Receiving Party or by any other person to whom such Receiving Party gives access to Confidential Information of the Disclosing Party.

11 INTELLECTUAL PROPERTY

11.1 Where Inoapps Software is provided to the Customer to enable the Customer to make use of the Services, Inoapps grants to the Customer a non-exclusive non-transferable license to use the Inoapps Software solely for the purpose of receiving and using only the Services as set out in the Statement of Work. Inoapps Software may not be used for any other purpose except as set out in the Statement of Work. Inoapps warrants that at delivery of the Inoapps Software it shall comply in all material respects with its documentation.

11.2 Where any Third Party Software is provided to the Customer to enable the Customer to make use of the Services, Inoapps shall notify the Customer of the terms and conditions on which such Third Party Software may be used by the Customer.

11.3 The Customer will not copy, decompile or modify the Software without Inoapps prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party other than as expressly permitted in the applicable Statement of Work or pursuant to the terms and conditions of the Third Party Software referred to in clause 11.2 above.

11.4 To the extent that Inoapps itself has the benefit of any warranty or guarantee from the supplier or licensor of any Third Party Software in respect of such Third Party Software, Inoapps will, to the extent that it is able, pass on the benefit of any such warranty or guarantee to the Customer.

- 11.5 The Customer acknowledges that Inoapps has no obligation to review or edit any of the Customer's information or material or otherwise used in connection with the Services. However, Inoapps reserves the right to access, retain and disclose copies of such information or material for the purposes of:
- (a) complying with any applicable laws, regulations, statutory instruments or the terms of Inoapps licenses and contracts;
 - (c) observing the performance of the Services including for the monitoring of Service Levels;
- 11.6 Any Intellectual Property Rights created as part of the Services that are deemed to be Bespoke Software will vest in the Customer and Inoapps hereby assigns to the Customer full title guarantee all rights and interest in the Bespoke Software with effect from its creation. Nothing in this Agreement shall prevent Inoapps from adding to its library of templates, processes and procedures during the provision of the Services
- 11.7 The Customer agrees that all and any copyright and other intellectual property rights (including, without limitation, rights in and to inventions) created by Inoapps or by any Inoapps Associated Company arising out of its provision of the Services or otherwise in connection with this Agreement ("Intellectual Property Rights") shall belong to Inoapps absolutely or such Inoapps Associated Company absolutely. Inoapps hereby grants to the Customer (or shall procure the grant of) a royalty-free, non-transferable, nonexclusive license to use such Intellectual Property Rights to the extent necessary to allow the Customer to receive and use the Services and to allow third party users (to the extent permitted pursuant to clause 3.6) to receive and use the Services.
- 11.8 Inoapps shall, at its own expense, (i) defend, or at its option settle any claim or suit against the Customer on the basis of infringement of any Intellectual Property Rights by the Services excluding any claim or suit arising from any Customer provided item and (ii) pay any final judgment entered against the Customer on such issue or any settlement thereof, provided that: the Customer notifies Inoapps promptly of each such claim or suit; Inoapps is given sole control of the defence and/or settlement; and the Customer fully cooperates and provides all reasonable assistance to Inoapps in the defence or settlement.
- 11.9 If all or part of the Services becomes, or in the opinion of Inoapps may become, the subject of a claim or suit for infringement, Inoapps, at its own expense and sole discretion, may do one of the following: (i) procure for the Customer the right to use the Services or the affected part thereof; (ii) replace the Service or affected part with other suitable Services; or (iii) modify the Services or affected part to make the same non-infringing, provided that in the case of either (ii) or (iii) there shall be no adverse impact on the performance, functionality or availability of the replaced or modified Services.
- 11.10 Inoapps shall have no obligations under clauses 11.8 or 11.9 to the extent a claim is based on: (i) the combination, operation or use of the Services with other services or software not provided by Inoapps, if such infringement would have been avoided in the absence of such combination, operation or use; or (ii) use of the Services in any manner inconsistent with this Agreement; or (iii) the result of the negligence or wilful misconduct of the Customer.
- 11.11 Inoapps shall indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer that the Services infringe the intellectual property rights of any third party.
- 11.12 The Customer shall indemnify Inoapps against all liabilities, costs, damages and losses suffered or incurred by Inoapps arising out of or in connection with any claim made against Inoapps that the Customer's use of the Services infringe the intellectual property rights of any third party

12 LIMITATION OF LIABILITY

- 12.1 Nothing in this Agreement excludes or limits the liability of either party for death or personal injury arising from its own negligence or for any fraudulent pre-contractual misrepresentation on which the other can be shown to have relied to the extent that the same cannot be lawfully limited or excluded.

- 12.2 Subject to clause 12.1, neither party shall be liable to the other party whether under this Agreement, in tort (including negligence) or otherwise for indirect loss, loss of profits, anticipated profits, business, goodwill or anticipated savings or for any indirect or consequential loss or damage.
- 12.3 The liability of Inoapps and any Inoapps Associated Company to the Customer in contract, tort (including negligence) or otherwise arising out of this Agreement in respect of loss and damage to the Customer's tangible property (other than loss of or damage to data) is limited to £5,000,000 (Five Million Pounds). The provisions of clause 12.4 shall apply to loss of or damage to data.
- 12.4 Save in respect of clauses 12.1 and 12.3, the maximum aggregate liability of either party to the other in contract, tort (including negligence) or otherwise in relation to or arising out of all Events of Default occurring during any Contract Year shall be limited to the annual aggregate of the Charges paid and/or payable during such Contract Year, provided that in no event will Inoapps be liable for loss which could have been avoided by the Customer following Inoapps reasonable advice and instructions.
- 12.5 Subject to clauses 12.1 and 12.3, the liability of Inoapps and any Inoapps Associated Company to the Customer in contract, tort (including negligence) or otherwise in relation to or arising out of the the supply and installation of hardware and software, to the Customer pursuant to this Agreement is limited to the supply and installation of hardware and software price.
- 12.6 Neither Inoapps nor any Inoapps Associated Company shall be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of the Customer or any other third party, including other providers of telecommunications, computers or other equipment or services, including Internet services.
- 12.7 Neither party shall be liable to the other in respect of any loss or damage arising out of or in connection with this Agreement or as a result of the provision of the Services unless either party brings legal proceedings against the other within 3 years from the date when the party first became aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period whichever is the earlier.
- 12.8 For the avoidance of doubt, the limits of liabilities set out in this clause 122 are the limits of the combined liabilities of the parties pursuant to or in connection with this Agreement or the provision of any Services.

13 INSURANCE

- 13.1 Inoapps shall throughout the Term and for a period of three (3) years following termination or expiry, have and maintain, as a minimum the following insurances with insurers of repute. The payment of the premiums in respect of any insurance required under this clause 133 shall be the responsibility of, and paid by Inoapps.
- 13.2 "Insurances"
- (a) public liability insurance (including product liability) for a minimum of £5 million for each occurrence;
 - (b) professional indemnity insurance for a minimum of £5 million for each occurrence; and
 - (c) employer's liability insurance for a minimum of £5 million for each occurrence; and
 - (d) such other insurances as the Inoapps deems appropriate in order to meet its obligations under this Agreement or as are required by law or contract.

14 NOTICES

- 14.1 Any notices to be given under the Agreement shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by first class post or by facsimile transmission to the party's address set out in the Agreement or such other address as may be designated in writing from time to time or if no such address is set out or designated then to the registered office or other usual business address of that party for the attention of the Financial Director.
- 14.2 Any notice sent by first class post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered two days after its dispatch. Any notice given by facsimile transmission shall be deemed to have been

delivered on the next working day following transmission subject to receipt of the appropriate confirmation of transmission. Notices sent by email shall not be classed as valid.

15 ASSIGNMENT and SUBCONTRACTING

- 15.1 The Customer shall not assign, delegate, sub-contract or otherwise deal with any of its rights and/or obligations under the Agreement without the consent of Inoapps, such consent not to be unreasonably withheld or delayed.
- 15.2 Inoapps shall have the right to assign all or any of its rights and obligations under the Agreement to an Inoapps Associated Company upon the consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 15.3 Inoapps may sub-contract the performance of its obligations, in whole or in part, under this Agreement at any time, provided that in each case Inoapps shall remain liable for the acts and omissions of any such subcontractor.
- 15.4 Either party may assign any or all of its rights under the Agreement to a successor pursuant to a merger or consolidation, or an assignee pursuant to a sale of all or substantially all of its assets without the prior written consent of the other party.

16 FORCE MAJEURE

- 16.1 Neither party shall be liable for any loss or damage, which may be suffered due to, without limitation, any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, acts of terrorism or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Third Party Software or any other cause beyond the party's reasonable control ("**Event of Force Majeure**"). Should any such Event of Force Majeure occur both parties reserve the right to suspend all or any part of the Agreement pending cessation of such Event of Force Majeure or the effect thereof, without incurring any liability for any loss or damage thereby occasioned. Should such suspension exceed 60 days in length, either party may terminate this Agreement without incurring any liability for any loss or damage to the other in respect of that termination.

17 ENTIRE AGREEMENT

- 17.1 This Agreement and the Schedule constitutes the entire agreement and understanding between Inoapps and the Customer relating to its subject matter (except that neither party excludes liability for any fraudulent pre-contractual misrepresentations on which the other party can be shown to have relied) and supersedes all and any previous agreements, undertakings and representations made or existing between the parties. Both parties warrants that in entering into this Agreement it has not relied on any representations made by the other party, other than those contained in this Agreement.
- 17.2 Subject to clause 14.1, no variation to the Agreement or the Services shall bind either party, unless the same is agreed in writing by signing a Inoapps change control note signed by an authorised representative of each party.
- 17.3 No representation made by any of employees or agents of either party concerning any Services shall bind the other party unless the same is confirmed in writing by an authorised representative of the relevant party.
- 17.4 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings, and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

18 DISPUTE RESOLUTION

- 18.1 Either party may call a management meeting of the parties by serving not less than 5 working days written notice on the other party. Each party agrees to procure that each party's authorised representative shall attend all such meetings called in accordance with this clause.
- 18.2 Those attending the relevant meeting shall use all reasonable endeavours to resolve disputes arising out of this Agreement. If the meeting fails to resolve the dispute within 5 working days of its being referred to it, then at any time within three (3) working days thereafter either party by notice in writing may refer the dispute to the senior managers of each party who shall co-operate in good faith to resolve the dispute as amicably as possible within ten (10) working days of the dispute being referred to them.
- 18.3 In the event the senior managers are unable to resolve the dispute within that ten (10) working day period ("the Cooling Off Period"), then at any time within three (3) working days thereafter either party by notice in writing may refer the dispute to executive sponsors for each party who shall co-operate in good faith to resolve the dispute as amicably as possible.
- 18.4 If the executive sponsors are unable to resolve the dispute within ten (10) working days of the dispute being referred to them, then the parties may agree to attempt to have the matter resolved:
- (a) through mediation using the Centre for Dispute Resolution, Harbour Exchange Square, London;
 - or (b) by referring the matter to a technical expert (if the dispute is of a technical or factual nature); or
 - (c) by submitting the matter to the English courts.

Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings in the English Courts under the jurisdiction of the English courts or any other form of mediation, arbitration or alternate dispute resolution until the expiry of the Cooling Off Period.

19 NO WAIVER

- 19.1 Neither party's failure to exercise or enforce any right conferred by the Agreement shall be deemed to be a waiver of any such right nor operate so as to bar the exercise or the enforcement thereof or of any other right on any later occasion.

20 SEVERABILITY

If any provision of the 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 any other provisions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

21 THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of this Agreement but this shall not affect any right or remedy of a third party, which exists or is available apart from the Act. The parties reserve the right pursuant to s2(3) of the Act to rescind or vary this Agreement or any part of it without the consent of any Inoapps Associated Company or any other person who is not a party to the Agreement.

22 NON SOLICITATION

- 22.1 For the term of this Agreement and for a period of twelve months thereafter, without the prior written consent of the other party, neither party shall either directly or indirectly solicit or entice away (or seek or attempt to entice away) from the employment of the other party any person(s) employed (or any person(s) who have been so employed in the preceding twelve months by such other party or third party contractor. For the avoidance of doubt, this clause shall not apply to unsolicited responses by employees to general recruitment advertising.

22.2 In the event that a party breaches Clause 22.1 it shall pay to the other party, by way of liquidated damages, an amount equivalent to six months gross salary of such employee as at their date of termination of employment. Both parties acknowledge that this is a reasonable assessment of the likely loss to the other of losing and/or replacing the services of such employee.

23 AUDIT

23.1 Inoapps shall maintain accurate and up to date financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Inoapps shall also maintain accurate and complete records relating to its performance of this Agreement.

23.2 Inoapps will allow the Customer reasonable access to enable the Customer and any of the Customer's third party consultants (such as auditors, other advisors or insurers) to which Inoapps has no reasonable objection, to carry out an audit of Inoapps relating to the provision of the Services within this agreement. This audit is subject to the Customer's and any of the Customer's third party consultant's obligations of confidentiality.

23.3 The audit shall be for the purpose of verifying:

- (a) the accuracy of Inoapps invoices to the Customer;
- (b) that the Services are being provided in accordance with the Service Levels;
- (c) that Inoapps is complying with its obligations under the agreement;
- (d) any matter which the Customer's insurers may require for the purposes of the Customer maintaining or obtaining insurance cover; and (e) any other reasonably agreed purpose.

23.4 Inoapps will require reasonable written notice from the customer of such an audit and shall provide reasonable assistance during normal working hours. The audit will normally be performed no more frequently than once a year.

23.5 Inoapps will allow access to and provide copies of all records and information relating to the Services and their provision, except that Inoapps may refuse to provide access to:

- (a) any information belonging or relating to other Inoapps customers who are not associated in any way with this agreement or the provision of the Services; and/or
- (b) any information relating solely to Inoapps cost of providing the Services.

23.6 The Customer shall bear its own costs of conducting such an audit and shall use all reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt Inoapps daily activities.

24 DATA PROTECTION

24.1 Each party warrants to the other that they have made the proper notification to the Office of the Information Commissioner in respect of their use and processing of "personal data" (as that term is defined in the DP Act).

24.2 The parties acknowledge and agree that, for the purposes of this Agreement, Customer shall be the data controller and Inoapps shall be a data processor (both as such terms are defined in the DP Act).

24.3 Customer shall procure that it has all the necessary consents from the data subjects as defined in the DP Act to use and for Inoapps to use the data for the purpose of the performance of the Services.

24.4 For any personal data (as defined in the DP Act) processed by a party in connection with this Agreement, that party warrants to the other that:

- (a) it has made all necessary registrations of particulars including sources and disclosures in line with the provisions of the DP Act;
- (b) it complies, and will continue to comply, with the DP Act, including the data protection principles;
- (c) it will co-operate as far as is reasonable with the other party in complying with any subject access request; and
- (d) it will co-operate fully with the other party in dealing with any investigations carried out by the Information Commissioner and
- (e) it will not use the personal data for its own purposes.

24.5 Inoapps will ensure that any such personal data is processed only for the purposes of this Agreement and in accordance with the DP Act and the written instructions of Customer. Customer undertakes that any instructions given to Inoapps will be in accordance with the DP Act.

The parties will take appropriate technical and organisational measures to guard against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, having regard to the nature of the data and the processing to be undertaken.

25 CO-OPERATION

25.1 Inoapps shall co-operate, and procure that each of its authorised sub-contractors co-operate, with the Customer and any third party engaged by Customer to provide services to the Customer, including a third party which is a competitor of Inoapps, so as to integrate (where reasonably requested by the Customer) other services, materials or equipment supplied by the Customer or any third party with the Services.

25.2 Such co-operation shall include, where appropriate, the provision of information and provision of access to Inoapps operations but Inoapps shall not be obliged to disclose any confidential information or trade secrets.

25.3 The co-operation shall be limited to enable the Customer and any third party to provide the services covered under the terms of this Agreement and shall be supplied by Inoapps at its standard rates as notified to the Customer from time to time.

26 EXIT MANAGEMENT

On expiry or early termination Inoapps and the Customer shall comply with the requirements of the Exit Management Schedule and any current exit plan agreed between the parties.

27 BUSINESS CONTINUITY

Inoapps shall maintain documented and tested business continuity plans necessary to meet reasonable prudential concerns about Inoapps ability to perform its obligations herein without interruption or degradation in performance during and after any event that would otherwise affect the performance of such obligations. Upon the Customer's reasonable request, Inoapps shall provide the Customer with evidence of and opportunities to verify this business continuity capability.

28 RELATIONSHIP

Nothing in this Agreement is intended or shall be construed to create a relationship or agency or partnership between the parties. Accordingly, except as expressly authorised herein, neither party shall have any authority to act or make representations on behalf of the other party, and nothing herein shall impose any liability on either party in respect of any liability incurred by the other party to a third party.

29 GOVERNING LAW

The Agreement shall be governed by and constructed and interpreted in accordance with English law, and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

30 SURVIVAL OF TERMS

Termination of this agreement shall not affect the continued operation of those clauses that are intended expressly or by implication to survive termination.

31 COUNTERPART

This Agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

SCHEDULE 1 - DEFINITIONS

"Acceptance" shall occur in accordance with the procedures outlined in Clause 36 of this agreement.

"Acceptance Criteria" means those tests which the Services and or Deliverables need to pass to achieve Acceptance Procedures.

"Acceptance Procedures" shall mean the procedures as detailed in Clause 36 to be followed to establish whether the Services and/or Deliverables perform in all material respects in accordance with the applicable Statement of Work and will meet any applicable Acceptance Criteria.

"Acceptance Certificate" means Inoapps standard form of Acceptance of Deliverables attached as Schedule 7.

"Additional Charges" means the charges (to be calculated by Inoapps on a time and materials basis at its then prevailing rate) in respect of the provision of the Additional Services

"Agreement" means this Agreement and any other schedules or appendices attached to this Agreement which is made in writing and is signed by an Authorised Signatory of each Party.

"Authorised Signatories" means those people from time to time authorised to sign Statements of Work.

"Bespoke Software" shall mean software developed by Inoapps which shall contain the Customer data and shall contain specific code that the Customer and Inoapps agree gives the Customer a competitive advantage, in the performance of Inoapps obligations under this Agreement;

"Change Control Procedure" means the Change Control Procedure set out in Schedule 4;

"Charges" means the Charges and/or any other charges payable by the Customer to Inoapps pursuant to this Agreement;

"Consulting Day" shall mean a core working day of 8 hours from 9.00am to 5.00pm with an hour break for lunch, Monday to Friday, excluding UK public holidays.

"Confidential Information" means all information obtained by the Parties in connection with the discussions leading up to or in the performance of this Agreement in whatever format or media obtained (and whether verbal or written) which is marked or notified to the recipient as being confidential, or which in the normal course of business would be considered to be of a confidential nature, including but not limited to business plans, financial information, information of a price sensitive nature and information pursuant to Clause 10

"Contract Year" means a calendar year (12 months) commencing on the Service Commencement Date set out in the Statement of Work and on each subsequent anniversary thereof;

"Customer (Customer)" means the Company identified as Customer at the front of this Agreement and any subsidiary, holding company or a subsidiary of its holding company where Customer holds a majority of the voting rights in it that use the environments set out in schedule 7 and will gain benefit from the Services being provided by Inoapps under this Agreement.

"Deliverable(s)" shall mean any document, ideas or know how, all Bespoke Software, software configuration and related reports, specifications and user manuals developed by Inoapps in the course of performance of the Services.

"Disaster" means an event defined in the Disaster Recovery Plan

"Disaster Recovery Plan" means the Customer's plan which sets out the procedures to be adopted by Inoapps in the event that the Products or any data is damaged or becomes unavailable by reason of a Disaster

"Dispute" means any dispute, difference or question of interpretation arising out of this Agreement, including any dispute, difference or question of interpretation relating to the Services and failure to agree in accordance with the Change Control Procedure;

"Dispute Resolution Procedure" means the procedure described in Clause 18.

"DP Act" means the United Kingdom Data Protection Act 1998, as amended from time to time.

"Exit Management" means the requirements of the Exit Management Schedule 5.

"Expenses" means reasonable expenses for accommodation, travel and subsistence incurred whilst performing the Services.

"Go Live" of a Deliverable shall be defined as use of such Deliverable by more than one business or technical user in the live production environment unless otherwise described in a Statement of Work. For the avoidance of doubt, Go Live shall be deemed Acceptance.

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of skill, diligence and foresight, which would reasonably be expected from an experienced person, engaged in the same type of undertaking and in the same or similar circumstances;

"Holding Company" and "Subsidiary" shall have the meanings ascribed to those terms in sections 1159 and Subsidiary Undertaking means as in defined in s1162 of the Companies Act 2006 as amended;

"Initial Period" means the minimum period of time (60 months) calculated from the Services Commencement Date that the Customer has committed to receive and pay for Services, as specified in the Statement of Work;

"Inoapps" means Inoapps Limited, a company registered in England and Wales with company number SC280651 and whose registered office is 2 Fountainhall Road, Aberdeen, AB15 2DT;

"Inoapps Associated Company" means any Holding Company from time to time of Inoapps or any Subsidiary from time to time of Inoapps or of such Holding Company;

"Inoapps Personnel" means any individual appointed by Inoapps to perform the services.

"Inoapps Software" shall mean any software provided or made available by Inoapps as part of or in connection with any Services which is not Bespoke Software or Third Party Software.

"Intellectual Property Rights" shall mean any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for the performance of the Service any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

"Key Roles" means those roles to be fulfilled by personnel from either Party and agreed by the Parties to be essential for the successful performance of the Services.

"Material(s)" shall mean any design, specifications, instruction, software, data or other like documents supplied by either Party to this Agreement to the other for the performance of the Service.

"Payment Schedule" means the Schedule 6 to this Agreement;

"Payment Due Dates" means the dates shown on the Payment Schedule;

"Project Manager(s)" the named resource provided by each party that controls the Deliverables, resource and timelines for that party

"Project Plan" shall mean the document detailing the timing and the level of resource required to complete the Services.

"Schedule" means the Schedule(s) to this Agreement including any schedule duly completed and executed from time to time by the parties to this Agreement;

"Services" means the services referred to in the Statement of Work(s) to be provided by Inoapps to the Customer pursuant to the Agreement and the term "Service" shall include any one of such Services;

"Service Commencement Date" means the target date for the commencement of the provision of the Services or any or each of them by Inoapps to the Customer as specified in the Statement of Work;

"Service Levels" means any service levels for the provision of a Service as defined in the Statement of Work;

"Service Failure" means an application or technology failure to the supported environments as set out in the Statement of Work;

"Service Level Agreement" means the document appended to this Agreement which defines the scope and level of Service to be provided.

"Statement of Work" shall mean a document specifying the Services, Deliverables, Acceptance Criteria, Charges, Project Plan and the Parties' responsibilities which together when signed by the Parties constitute a Work Package and which is attached to this Agreement as Schedule 7.

"Software" means the Inoapps Software and the Third Party Software;

"Special Terms and Conditions" means the special terms and conditions set out in Schedule 2 and/or 3 of this Agreement;

"Third Party Software" shall mean software provided as part of the overall transaction that is purchased from a third party to this Agreement or is otherwise supplied by Customer or Inoapps and is used to perform the Services or the Agreement.

"Transitional Assistance" means assistance provided by the Inoapps relating to termination or cancellation of the services provided.

"UK Retail Prices Index" means the most recent Retail Prices Index (All Items) (RPI) as published by the Office of National Statistics on their website (www.statistics.gov.uk).

"Work Package" shall mean a collection of Services, and Deliverables governed by a duly authorised Statement of Work that Inoapps will from time to time deliver to Customer.

