

INVISU - SAAS TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Terms.

Agreement: the Agreement between Invisu and the Customer for the provision of the Services, comprised of the Proposal, these Terms and the Schedule(s) as applicable.

Applicable Laws: means primary and secondary legislation, retained EU law (as defined in section 6(7) of the European Union (Withdrawal) Act 2018), regulations, regulatory policies, guidelines or industry codes which apply from time-to-time.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.4.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: means the date the Agreement is formed between the parties in accordance with clause 2.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of Invisu's information), information pertaining to customers, pricing and marketing information relating to the Software or any of its constituent parts, any test results relating to the use of the Services.

Customer: the party who purchased the Services in accordance with these Terms.

Customer Data: the data inputted by the Customer, Authorised Users, or Invisu on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

DP Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; the Data Protection Act 2018 (and all regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party. The terms **Data Controller, Data Processor, Data Subject, Personal Data** and **Processing** bear the respective meanings given to them in the DP Legislation.

Documentation: the documentation, PDF documents, technical drawings and online manuals, made available to the Customer by Invisu online via the Platform which sets out a description of the Services and the user instructions for the Services.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, and sanctions, which are applicable to either the Customer or an Authorised User (but not Invisu) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Initial Subscription Term: means the period of one year from the Commencement Date.

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invisu: means Invisu Limited, a company incorporated and registered in England and Wales with company number 08835410 and whose registered office is at The Wellsprings, Howell Croft South, Bolton, BL1 1SB t/a Invisu.

Loss: means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

Normal Business Hours: 9:00 am to 5.00 pm local UK time, each Business Day.

Platform(s): means the platform via which the Software is made available, and/or any other website(s), application(s) or platform(s) used by Invisu for the delivery of the Services from time to time.

Proposal: the written proposal issued by Invisu to the Customer for the provision of the Services on the basis of these Terms.

Renewal Period: the period described in clause 14.1.

Services: the subscription services, and Support provided by Invisu to the Customer under this Agreement via the Platform or any other Platform notified to the Customer by Invisu from time to time, as more particularly described in the Documentation.

Software: the invisu online software application provided by Invisu as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to Invisu for the User Subscriptions in accordance with the Subscription Option, as set out in the Proposal.

Subscription Option: means the available subscription options for the Services identified in the Proposal, and any further subscription option that may be available from Invisu from time to time.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support: the Software support and maintenance services provided in respect of the Software in accordance with Schedule 1.

Supported Environment: means a hardware operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Services as set out in its Documentation.

Terms: means these terms and conditions.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any

programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires:
 - 1.5.1 words in the singular shall include the plural and in the plural shall include the singular; and
 - 1.5.2 a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision:
 - 1.6.1 is a reference to it as it is in force as at the date of this Agreement;
 - 1.6.2 shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.7 A reference to **writing** or **written** includes email but not fax.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 If there is an inconsistency between the terms of:
 - 1.9.1 the Proposal;
 - 1.9.2 the Schedules; and
 - 1.9.3 the Terms,the terms set out in the respective document first set out in the list above will prevail.

2. FORMATION AND SUBSCRIPTIONS

- 2.1 The Proposal is issued by Invisu to the Customer and remains valid for a period of 30 days from its date (the **Offer Invitation Period**) and for the avoidance of doubt shall not be an offer capable of acceptance. If the Customer wishes to enter into the Agreement on the basis of the Proposal it may make an offer to Invisu by issuing a purchase order or otherwise doing so in writing (**Offer**) during the Offer Invitation Period. If the Customer does not make an Offer within the Offer Invitation Period the Proposal shall, unless otherwise determined by Invisu, be deemed to have expired.
- 2.2 Following receipt of the Offer, Invisu shall either accept or reject the same at its absolute discretion. Invisu's acceptance of the Offer shall be issued to the Customer in writing, at which point the Agreement shall be deemed to come into effect (**Commencement Date**).
- 2.3 Once the Agreement is formed in accordance with clause 2.2, Invisu shall provide the Services to the Customer in accordance with these Terms and the applicable Schedule(s). Whilst Invisu shall use its reasonable endeavours to comply with any proposed timescales or deadlines when performing its obligations under the Agreement, such times are indicative only and time for the performance in accordance with them shall not be of the essence.

3. LICENCE

- 3.1 Subject to clause 2.1, the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of the Agreement, Invisu hereby grants to the Customer a non-exclusive, non-transferable right and licence, (without the right to grant sublicences), to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 3.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, and that each Authorised User shall keep their password confidential;
 - 3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Invisu within 5 Business Days of Invisu's written request at any time or times;
 - 3.2.5 it shall permit Invisu or Invisu's designated auditor to audit the Services and compliance with this Agreement in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Invisu's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Invisu's other rights, the Customer shall promptly disable such passwords and Invisu shall not issue any new passwords to any such individual; and
 - 3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has underpaid Subscription Fees to Invisu, then without prejudice to Invisu's other rights, the Customer shall pay to Invisu an amount equal to such underpayment as calculated in accordance with the prices set out in the proposal within 10 Business Days of the date of the relevant audit.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.3.2 facilitates illegal activity;
 - 3.3.3 depicts sexually explicit images;
 - 3.3.4 promotes unlawful violence;
 - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and Invisu reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

- 3.4 The Customer shall not:
- 3.4.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - 3.4.1.1 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
 - 3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 3.4.3 use the Services and/or Documentation to provide services to third parties; or
 - 3.4.4 subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
 - 3.4.6 introduce or permit the introduction of, any Virus or Vulnerability into Invisu's network and information systems.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Invisu.
- 3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 4. ADDITIONAL USER SUBSCRIPTIONS**
- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Proposal and Invisu shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with this Agreement and the applicable Subscription Option.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Invisu in writing. Invisu shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where Invisu approves the request, Invisu shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.
- 4.3 If Invisu approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Invisu's invoice, pay to Invisu the relevant fees for such additional User Subscriptions as set out in **Error! Reference source not found.** Proposal and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Invisu for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5. PROVISION OF THE SERVICES

- 5.1 Invisu shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer in accordance with these Terms and the applicable Schedule(s).
- 5.2 Invisu shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance during the Normal Business Hours; and
 - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Invisu has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 Invisu will, as part of the Services, provide the Customer with Invisu's standard customer Support Services during Normal Business Hours in accordance, as outlined at Schedule 1. The Customer may purchase enhanced support services separately at Invisu's then current rates.

6. DATA PROTECTION

- 6.1 Both parties will comply with all applicable requirements of the DP Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the DP Legislation.
- 6.2 The parties acknowledge that for the purposes of the DP Legislation, the Customer is the Controller and Invisu is the Processor.
- 6.3 Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Invisu and/or lawful collection of the Personal Data by Invisu on behalf of the Customer for the duration and purposes of the Agreement.
- 6.4 Any Personal Data provided to Invisu under the Agreement shall be processed in accordance with its Privacy Notice, which is available upon request.

7. THIRD PARTY PROVIDERS

- 7.1 The Customer acknowledges that the Services may enable or assist it to access the Web Platform content of, correspond with, and purchase products and services from, third parties via third-party platforms and that it does so solely at its own risk. Invisu makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party platform, or any transactions completed, and any contract entered into by the Customer, with any such third party.
- 7.2 Any contract entered into and any transaction completed via any third-party platform is between the Customer and the relevant third party, and not Invisu. Invisu recommends that the Customer refers to the third party's Platform terms and conditions and privacy policy prior to using the relevant third-party platform. Invisu does not endorse or approve any third-party platform nor the content of any of the third-party platform made available via the Services.

8. INVISU'S OBLIGATIONS

- 8.1 Invisu undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Invisu's instructions, or modification or alteration of the Services by any party other than Invisu or Invisu's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Invisu will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such

correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

8.3 Invisu:

8.3.1 does not warrant that:

8.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or

8.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or

8.3.1.3 the Software or the Services will be free from Vulnerabilities or Viruses; or

8.3.1.4 the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements; and

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

8.4 The Agreement shall not prevent Invisu from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

8.5 Invisu warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 provide Invisu with:

9.1.1.1 all necessary co-operation in relation to this Agreement; and

9.1.1.2 all necessary access to such information as may be required by Invisu;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

9.1.2 comply with all Applicable Laws and regulations with respect to its activities under this Agreement;

9.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Invisu may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Invisu, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

9.1.6 ensure that its network and systems comply with the relevant specifications provided by Invisu from time to time;

9.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Invisu's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage

obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

10.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.5 All amounts and fees stated or referred to in this Agreement:

10.5.1 shall be payable in pounds sterling;

10.5.2 are non-cancellable and non-refundable;

10.5.3 are exclusive of value added tax, which shall be added to Invisu's invoice(s) at the appropriate rate.

10.6 Invisu shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon no less than 3 months' prior notice to the Customer.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Customer acknowledges and agrees that Invisu owns all Intellectual Property Rights in the Services, Platform, Software and Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in any Intellectual Property Rights, or any other rights or licences in respect of the Services, Platform, Software or the Documentation.

11.2 Invisu confirms that it has all the rights in relation to the Services, Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.

11.3 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that Invisu may consider necessary or desirable to perfect the right, title and interest of Invisu in and to the Intellectual Property Rights in the Services, Software or Documentation.

11.4 The Customer shall use reasonable endeavours to prevent any infringement of Invisu's Intellectual Property Rights in the Services, Software or Documentation and shall promptly report to Invisu any such infringement that comes to its attention. In particular, the Customer shall:

11.4.1 ensure that each Authorised User, before starting to use the Services, is made aware that the Services, Software or Documentation are proprietary to Invisu and that it may only be used and copied in accordance with this Agreement;

11.4.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Services, Software or Documentation; and

11.4.3 not permit third parties to have access to the Services, Software or Documentation without the prior written consent of Invisu, who may require that such third party executes a written confidentiality agreement before being given access to the Services.

11.5 The Customer shall indemnify, keep indemnified, and hold it harmless against any Loss arising out of or in connection with its breach of this clause 11.

12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- 12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 13. LIMITATION OF LIABILITY AND INDEMNITY**
- 13.1 Except as expressly and specifically provided in this Agreement:
 - 13.1.1 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. Invisu shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Invisu by the Customer in connection with the Services, or any actions taken by Invisu at the Customer's direction;
 - 13.1.2 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
 - 13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.2 Nothing in this Agreement excludes or limits the liability of Invisu:
 - 13.2.1 for death or personal injury caused by Invisu's negligence;
 - 13.2.2 for fraud or fraudulent misrepresentation; or
 - 13.2.3 for any other matters in respect of which it is illegal to exclude or limit liability.
- 13.3 Subject to clause 13.1 and clause 13.2:
 - 13.3.1 Invisu shall not be liable to the Customer or any third party, whether in contract, tort (including negligence) breach of statutory duty or otherwise for any:
 - 13.3.1.1 consequential, indirect or special Losses;
 - 13.3.1.2 loss of profit;
 - 13.3.1.3 loss of contract or business;
 - 13.3.1.4 loss of opportunity;
 - 13.3.1.5 loss of savings, discount or rebate (whether actual or anticipated);
 - 13.3.1.6 damage to, loss or corruption of data;
 - 13.3.1.7 harm to reputation or loss of goodwill; and/or
 - 13.3.1.8 any other Loss,that arises in connection with this Agreement.
- 13.4 Invisu's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total of all Subscription Fees paid to Invisu by the Customer in cleared funds during the 12 months immediately preceding the date on which the claim arose.

- 13.5 In no event shall Invisu, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged infringement is based on:
- 13.5.1 a modification of the Services, Software or Documentation by anyone other than Invisu; or
 - 13.5.2 the Customer's use of the Services, Software or Documentation in a manner contrary to the instructions given to the Customer by Invisu; or
 - 13.5.3 the Customer's use of the Services, Software or Documentation after notice of the alleged or actual infringement from Invisu or any appropriate authority.
- 13.6 In the defence or settlement of any claim, Invisu may procure the right for the Customer to continue using 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.
- 13.7 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Invisu's Intellectual Property Rights.
- 13.8 The Customer shall indemnify Invisu, keep Invisu indemnified and hold Invisu harmless against all Loss (including any direct, indirect, special or consequential Loss, loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss and any and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Invisu arising out of or in connection with:
- 13.8.1 the Customer's breach of this Agreement or any other legal obligations howsoever arising;
 - 13.8.2 any wilful or negligent act or omission of the Customer, its officers, employees, contractors or agents; and
 - 13.8.3 the Customer's use of the Services or receipt of the Support.

14. TERM AND TERMINATION

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- 14.1.1 either party notifies the other party of termination, in writing, at least 3 months before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 14.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Subscription Term together with any subsequent Renewal Periods (together the **'Subscription Term'**).
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 14.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 14.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**);
 - 14.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 14.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 14.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 14.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.3 to clause 14.2.10 (inclusive);
 - 14.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 14.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
 - 14.2.14 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.3 On termination of this Agreement for any reason:
- 14.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
 - 14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.3.3 Invisu may destroy or otherwise dispose of any of the Customer Data in its possession unless Invisu receives, no later than ten days after the Commencement Date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Invisu shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid

all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Invisu in returning or disposing of Customer Data; and

- 14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. FORCE MAJEURE

Invisu shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Invisu or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

- 17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. SEVERANCE

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that in entering into this Agreement it does not rely on, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

21. ASSIGNMENT

- 21.1 The Customer shall not, without the prior written consent of Invisu, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.2 Invisu may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. NOTICES

- 24.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 24.1.2 sent by email to the addresses provided by the Customer in writing (in the case of the Customer) or to admin@invisu.uk (in the case of Invisu).
- 24.2 Any notice shall be deemed to have been received:
- 24.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - 24.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. GOVERNING LAW

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 interpreted in accordance with the law of England and Wales.

26. JURISDICTION

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 – Support and Maintenance Services

1. DEFINITIONS

Defined words and expressions used in this Schedule shall take the meaning given to them in the Terms, unless detailed below:

Backup Services: means the Software backup services, to be performed a frequencies outlined in the Customer's Subscription Option.

Critical Fault: a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Supported Software.

Enhanced Support Service: the element of Support to be supplied by Invisu to the Customer as specified in the Subscription Option.

Maintenance Release: a release of the Software which correct faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Modification: any Maintenance Release or New Version which is acquired by the Customer.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by Invisu in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Non-Critical Fault: any reproducible fault in the Software other than a Critical Fault.

Online Monitoring: means the online maintenance monitoring and other condition monitoring, performed in accordance with the Customer's Subscription Option.

Optional Support: any other services that the Customer and Invisu may from time to time agree shall form part of the Support and be supplied to the Customer by Invisu under the terms of this Schedule.

Service Levels: those standards of performance to be achieved by Invisu in performing the Software Support Services, as determined in the Subscription Option.

Software Support Services: means the Software Support, User Support, Backup Services, Online Monitoring and Updating Services.

Supported Software: means:

- (a) the elements of the Software, specified as being subject to Support as specified in the Proposal;
- (b) any Modification which is acquired by the Customer (whether under the Agreement or any other agreement between Invisu and the Customer) during the Subscription Term and which accordingly becomes part of the software defined as the Software; and
- (c) any other software which Invisu and Customer agree should be Supported Software for the purposes of this Agreement.

Updating Service: the element of updating Support to be supplied by Invisu to the Customer in accordance with the Subscription Option.

2. SUPPORTED SOFTWARE

2.1 In relation to Maintenance Releases:

- (a) as part of the Updating Service, Invisu shall from time to time make Maintenance Releases available to the Customer without charge; and
- (b) if the Customer fails to acquire and install a Maintenance Release within one (1) month of Invisu's notifying the Customer that such Maintenance Release is available for installation,

Invisu may terminate this Agreement by giving one (1) month's written notice to the Customer.

2.2 In relation to New Versions, if Invisu releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate the Agreement, nor shall it result in any adverse effect on the Support or the performance of Invisu's obligations under the Agreement. However, if Invisu has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within twelve (12) months of Invisu having notified the Customer that a New Version is available, acquired and installed that New Version, Invisu may terminate the Agreement by giving one (1) month's written notice to the Customer given at any time after the expiry of such period. Pending any such termination Invisu's obligations in respect of the Supported Software shall be reduced and the Fees shall remain unaffected.

2.3 Invisu shall provide sufficient support staff to fulfil its obligations under the terms of this Schedule. The support staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.

3. THE SUPPORT

3.1 To the extent set out in the Proposal, Invisu shall supply, and the Customer shall take the following elements of Support:

- (a) the Software Support Service;
- (b) the Updating Service;
- (c) Backup Services;
- (d) Online Monitoring; and
- (e) such of the Optional Support as are included from time to time within an order for Optional Support agreed between Invisu and the Customer under paragraph 4 below.

3.2 In relation to the Standard Support Service:

- (a) the Standard Support Service shall be provided during Business Hours and shall comprise:
 - (i) an email support service (and/or where provided for in the relevant Subscription Option, a telephone support service) to provide first-line technical support to users of the Supported Software; and
 - (ii) remote diagnosis and, where possible, correction of faults using the software management software;
- (b) if additional on-site support is required in any month it may be provided by Invisu at its option at an additional charge agreed in advance; and
- (c) where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release Invisu may decline to provide assistance in respect of that Non-Critical Fault.

3.3 In relation to the Updating Service:

- (a) Invisu shall issue Modifications of the Software as and when required and in whatever form (including, in the case of Non-Critical Faults, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of Invisu;
- (b) the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer;
- (c) for the avoidance of doubt, the cost of the Updating Service is included in the Fees payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of the licence of a New Version; and

- (d) once any Modification has been installed by the Customer, the Customer shall return all copies of the Software or any part of the Software which is superseded by that Modification.
- 3.4 Where applicable, in relation to the Enhanced Support Service, Invisu shall provide to the Customer:
- (a) support at times specified in the Proposal; and
 - (b) enhanced service levels when compared with the Standard Support Service as outlined in the Subscription Option.
- 3.5 Invisu may, on prior notice to the Customer, make changes to the Support, provided such changes do not have a material adverse effect on the Customer's business operations.
- 3.6 Invisu shall have no obligation to provide the Support where faults arise from:
- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by Invisu), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Software;
 - (c) use of the Software in combination with any equipment or software not provided by Invisu or not designated by Invisu for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
 - (d) relocation or installation of the Software by any person other than Invisu or a person acting under Invisu's instructions;
 - (e) any breach of the Customer's obligations under this Agreement howsoever arising or having the Software maintained by a third party;
 - (f) any Modification not authorised by Invisu;
 - (g) the Customer's failure to install update any Maintenance Release or New Version, as requested by Invisu; or
 - (h) operator error.

4. ORDERS FOR OPTIONAL SUPPORT

- 4.1 The Customer may from time to time request Invisu to supply Optional Support at an additional charge agreed in advance. Invisu shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that Invisu's ability to supply the Optional Support shall depend on the availability of appropriate resources at the time in question.
- 4.2 Where Invisu agrees to provide Optional Support, such agreement shall be embodied in an order for Optional Support. Each order for Optional Support shall be made under, and shall incorporate, the terms of this Agreement.

5. PROVISION OF THE SUPPORT AT CUSTOMER PREMISES

- 5.1 Where permitted in the Subscription Option Invisu's obligation to provide on-site services shall extend to the Customer's premises.
- 5.2 Invisu shall ensure that, while on the Customer's premises, its support staff and all other persons who enter such premises with the authority of Invisu for the purpose of, or in connection with, this Agreement or the provision of the Support, adhere to the Customer's security procedures and health and safety regulations, notified to Invisu in advance of their attendance at the Platform(s). The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, Invisu shall incur no liability for any delay in performing or failure to perform its obligations under this Agreement as a result of compliance with the terms of this paragraph 5.2.

6. THE CUSTOMER'S RESPONSIBILITIES

- 6.1 Without prejudice to paragraph 5.2 above, the Customer shall provide Invisu, its support staff and all other persons duly authorised by Invisu with full, safe and uninterrupted access including remote access to the Platform(s), systems, facilities and the Software as may reasonably be required for the purpose of performing the Support, such access, except in the case of the Enhanced Support Service, emergency or agreed out-of-hours downtime, to be within Business Hours. Where the Support is to be performed at any of the Platform(s), the Customer shall provide adequate working space and office facilities (including telephone) for use and take reasonable care to ensure their health and safety.
- 6.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 6.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from Invisu.
- 6.4 The Customer shall:
- (a) co-operate with Invisu in performing the Support and provide any assistance or information as may reasonably be required by Invisu, including in relation to the diagnosis of any faults;
 - (b) report faults promptly to Invisu; and
 - (c) keep full backup copies of all of its data.

7. INVISU'S WARRANTIES

- 7.1 Invisu represents and warrants to the Customer that at the date of this Agreement, Invisu has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for Invisu to perform the Support.
- 7.2 No representation or warranty is given by Invisu that all faults will be fixed, or will be fixed within a specified period of time.