TERMS AND CONDITIONS

Supplementary Terms and Conditions for Provision of Software as a Service via the G-Cloud Framework
V2.0

Terms and Conditions

innaxys

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Distribution

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Definitions

"**Agreement**"	means these Terms and Conditions, which form an integral part of the Main Agreement;
"**Authorised User**"	means any person who has been granted appropriate permission by the Customer to use the Products, Software or Service in accordance with the Order Form, the Main Agreement and this Agreement;
"**Business Hours**"	means 9am to 5pm on any Business Day
"**Business Day**"	means any other day than a Saturday, Sunday or Public Holiday and England and Wales;
"**Customer**"	means the customer as identified in the Order Form;
"**Customer Content**"	means all data and information introduced to, implemented within, or utilised by the Product, Software or Service which belongs to, is held within or is generated by the Customer's own systems, software, products or operations.
"**Customer Data**"	means data that is owned or managed by the Customer;
"**Customer Support Role**"	means an Authorised User who has been designated and appropriately trained to provide an agreed level of support and assistance to other Authorised Users of the Product, Software or Services, and who is granted permission to contact Innaxys Ltd for appropriate support and assistance where they are unable to resolve the query, issue or event from their own knowledge and experience;
"**Documentation**"	means all user guides, training manuals and any other such documents and written information which shall be issued to the Customer on commencement of the Service and from time to time if required.
"**Intellectual Property Rights**" and "**IPR**"	have the meaning as set out in Schedule 6 to the G-Cloud 6 Framework and Call-Off Contract;
"**Main Agreement**"	means the Clauses of the G-Cloud 6 Framework Agreement together with the Framework Schedules and annexes to it;
"**Order Form**"	- means the form set out in part 1 of Framework Schedule 2 (Call-Off Terms) to be used by a Contracting Body to order G-Cloud Services;
"**Party**"	means: a) for the purposes of the Framework Agreement, the Authority or the Supplier; b) for the purposes of the Call-Off Agreement, the Supplier or the Customer; and "**Parties**" shall be interpreted accordingly;
"**Products**"	means any and all cloud-based software provided by Innaxys Ltd to the Customer as described in the relevant Service Definition Document and Order Form;

"**Services**"	means any and all cloud-based services provided by Innaxys Ltd to the Customer as described in the relevant Service Definition Document and Order Form
"**Software**"	means any and all cloud-based software provided by Innaxys Ltd to the Customer as described in the relevant Service Definition Document and Order Form

Part 1 – Contractual Terms & Conditions

Structure of Agreement

1.   These Terms and Conditions form an integral part of the G-Cloud Framework Agreement, and are in addition and supplementary to the Schedule 2 Call-Off Agreement Terms and Conditions therein (herein after referred to as the "Main Agreement").

2.   No clause or term contained within this document is intended to supersede, replace or otherwise contradict any clause within the Main Agreement. In the event of a conflict, the order of precedence shall be as set out in Clause CO-1.2 of Schedule 2 the Main Agreement. For the avoidance of doubt, the clause is repeated below:

CO-1.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Agreement, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Agreement (including Supplier's Terms) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

   CO-1.2.1   the Framework Agreement (excluding Framework Schedule 2);

   CO-1.2.2   the Clauses of this Call-Off Agreement (excluding Supplier Terms);

   CO-1.2.3   the completed Order Form;

   CO-1.2.4   the Collaboration Agreement (Framework Schedule 7);

   CO-1.2.5   the Supplier's Terms as set out in the Framework Schedule 1 (G-Cloud Services); and

   CO-1.2.6   any other document referred to in the Clauses of this Call-Off Agreement.

Entire Agreement

3.   The Agreement, together with the contents of the documents referred to in Clause 2 above, constitutes the entire agreement between the parties. Each party confirms that it has not relied upon any representation statement or undertaking not recorded in the Agreement as an inducement to enter into it.

4.   No variation of the Agreement will be valid unless confirmed in writing by authorised signatories of both parties. If any court or competent authority decides that any of the provisions of these Terms and/or Agreement are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

Notices

5.   Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes or sent by email to the other party's email address as set out in this agreement.

6.   A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received when

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the recipient acknowledges receipt (such acknowledgement not to be unreasonably or knowingly withheld).

Waiver

7.   A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

8.   Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

Severance

9.   If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

10.   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

Indemnity

11.   The Customer shall, at all times during and after the term of this Agreement, indemnify Innaxys Ltd and keep Innaxys Ltd indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Innaxys Ltd arising from or in connection with:

(a) The Customer's breach of this Agreement or violation of applicable law by the Customer or any Authorised User;

(b) The Customer's or any Authorised Users' Use of the Services (including any activities and Use by the Customer's personnel); or

(c) The Customer's Content or the combination of the Customer's Content with other applications or content, including any claim involving alleged infringement of third-party rights by the Customer's Content or Use thereof.

12.   Innaxys Ltd shall notify the Customer of any such third-party claim, allow the Customer to conduct all negotiations and proceedings and provide The Customer with such reasonable assistance as is required by the Customer (at the Customer cost), and not, without prior consultation with the Customer, make any admission relating to such claim or attempt to settle it, provided that the Customer considers and defends the claim diligently, using competent counsel and in such a way as not to bring Innaxys Ltd's reputation into disrepute.

Assignment

13.   Neither Party can assign, mortgage or change any of its rights or obligations hereunder without the written consent of the other Party.

Escrow

14.   Innaxys Ltd agrees to place the Software into escrow under our standard escrow arrangements subject to the Customer entering into our standard escrow agreement and the Customer paying our annual escrow fee and the fees of the third party escrow agent.

Intellectual Property Rights

15.   Under this Agreement, all Intellectual Property Rights (hereinafter referred to as IPR) for the Software, Services or Products developed and delivered in accordance with this Agreement will remain the property of Innaxys Ltd, whilst the IPR for any Customer Data imported, held, processed or otherwise used within or by the Software will remain with the Customer. IPR shall not transfer between the Parties for any reason unless agreed in writing.

Competence

16.   Innaxys Ltd shall use all reasonable skill and care in carrying out the services.

17.   Innaxys Ltd shall only utilise competent personnel to carry out the Services who have been fully vetted (if and where required by the Customer's security requirements) and/or who are properly trained and competent to carry out the services.

Staff

18.   Staff of Innaxys Ltd and the Customer shall comply with such rules and regulations as are notified to them for the conduct of staff when present on the premises of the other party.

19.   The Customer will not, without the prior written consent of Innaxys Ltd, approach or contact, with the intention of employing, engaging or retaining, any employee of Innaxys Ltd engaged on or connected with the Services or Products to be provided under the Agreement. This restriction will apply during the term of, and for one year following the expiry or termination of, the Agreement.

Part 2 – Provision of the Service

Licences

20.   Innaxys Ltd hereby grants to the Customer a worldwide, non-exclusive, non-transferable license to all Software for the Customer's use in connection with the establishment, use, maintenance and modification of the system implemented by Innaxys Ltd. Software shall mean executable object code of Software programs and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the Software programs necessary for the proper function and operation of the system as delivered by the Innaxys Ltd and accepted by the Customer.

Support and Maintenance Services

21.   Where this Agreement also covers Support and Maintenance, this shall be provided by a suitably competent person.

22.   Innaxys Ltd shall provide the Support and Maintenance Services with reasonable skill and care.

23.   Support shall be available during Business Hours, and may be accessed by either email to the designated email address or telephone to the designated telephone number provided to the Customer.

24.   Planned maintenance will take place only at a time and day to be agreed between Innaxys Ltd and the Customer.

25.   Unplanned maintenance that is critical to the necessary functionality of the Software will take place as soon as possible after Innaxys Ltd becomes aware of the issue or functionality which requires attention, but subject to the Customer's agreement and acquiescence to any expected interference or downtime of the system.

26.   Innaxys Ltd may suspend the provision of the Support and Maintenance Services if any amount due to be paid by the Customer to Innaxys Ltd under this Agreement is overdue, and Innaxys Ltd has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support and Maintenance Services on this basis.

Delivery

27.   All delivery dates or times for Software and Products, and for the performance of Services are given in good faith and are indicative only. Time for delivery and performance shall not be of the essence of the Agreement and all deliveries of the Products shall be at the Customer's risk.

28.   Each delivery of Software and Products, or supply of Services under the Agreement will be deemed to constitute a separate enforceable contract to which these Terms will apply.

29.   Innaxys Ltd may make and the Customer shall accept partial deliveries of Software and Products.

Authorised Users

30.   In relation to the Authorised Users, the Customer undertakes that:

(a) the maximum number of Authorised Users that the Customer authorises to access and Use the Services shall not exceed the number of User Licences the Customer has purchased from time to time;

(b) The Customer will not allow or suffer any User Licence 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;

(c) where applicable, each Authorised User shall keep a strong and secure password for his Use of the Services, which shall be kept confidential.

Additional User Subscriptions

31.   The Customer may, from time to time during any Licence Term, purchase additional User Licences in excess of the number set out in the Order Form and Innaxys Ltd shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

32.   If the Customer wishes to purchase additional User Licences, the Customer shall notify Innaxys Ltd in writing.

33.   Where the Customer agrees to purchase additional User Licenses, the Customer shall, within 30 days of the date of Innaxys Ltd's invoice, pay to Innaxys Ltd any relevant fees for such additional User Licences as set out in the Order Form and, if such additional User Licences are purchased by the Customer part way through the Initial Contract Term, any applicable fees shall be pro-rated for the remainder of the Initial Contract Term.

Part 3 – Support and Maintenance Services

Services

34.   Innaxys Ltd agrees to provide, and the Customer agrees to purchase Support and Maintenance at the level set out in the Order Form, such support and maintenance to relate entirely and exclusively to the Software, Solutions or Products purchased, as set out in the Order Form.

Levels of Support

35.   The Customer shall allocate an agreed number of users to hold a Customer Support Role. Users who operate the Customer Support Role shall provide administrative and first-line support to all other users. This includes, but is not limited to, activities such as role administration, adding/deleting users, password recovery (where applicable) and accepting and answering general user questions etc.

36.   Users with the designated Customer Support Role can contact Innaxys Support for any issues they are unable to resolve within their own knowledge and capability. For security reasons, only designated Customer Support Role users may contact Innaxys Ltd support services.

Conditions of Support

37.   Software Support under the terms of the Support Levels set out in the Order Form shall not include the diagnosis and rectification of any fault resulting from:

1. The improper use operation or neglect of the Software

2. The modification of the Software

3. The failure by the Customer to implement recommendations in respect of, or solutions to faults previously advised by Innaxys Ltd;

4. Any repair adjustment alteration or modification of the Software without Innaxys Ltd's prior consent;

5. Any breach by the Customer of any of its obligations under any Agreement in respect of the Software;

6. The Customer's failure to install and use in substitution for any previous release any New Release of the Software;

7. The use of the Software for a purpose for which it was not designed.

38.   Should an issue be investigated under normal support terms and later be found to be caused by factors in the list as set out in Clause 37 above, then these may be invoiced to the Customer at Innaxys Ltd's discretion. If the Customer believes that these factors may be involved, the Customer or the Customer's designated Customer Support Role User should notify Innaxys Ltd when placing the support call. Even where such notification is given, Innaxys Ltd reserves the right to invoice the Customer once the issue has been diagnosed if Innaxys Ltd is asked to proceed with the provision of support or services for issues arising from said factors.

Contacting Innaxys Ltd

39.   Innaxys Ltd will provide the following communication mechanisms for the Customer to use when requesting Support;

a) **Online Chat -** Where available and subject to the Customer's own security restrictions and requirements, in-App support may be provided via an online chat function accessed during Business Hours from within the software or product.

b) **Telephone -** Innaxys Ltd shall maintain a telephone "hotline" during Business Hours to assist the Customer's designated Customer Support Role User in reporting errors and in providing first-line support in the use and operation of the Software. The relevant telephone number will be provided to the Customer at the start of the Contract.

c) **Email –** Innaxys Ltd shall maintain an email address for the express purpose of providing contracted Support. This dedicated email address shall be continuously monitored

d) **Service Desk –** Innaxys Ltd will implement an ITIL compliant virtual service desk via an online portal, through which the Customer's designated Customer Support Role User may log issues, questions, requests and suggestions. This is a fully monitored service through which progress and updates can be tracked directly by the Customer.

Training

40.   Innaxys Ltd will provide sufficient training to ensure that the Customer's Customer Support Role Users and an agreed number of other designated users are appropriately trained such that they are able to fully utilise the software or product and able to instruct others in the use of the software or product.