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Standard Terms & Conditions

May 2022

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In these terms and conditions, Inno Cloud Limited is referred to as the “Service Provider” and the party to whom the Proposal is addressed is referred to as “the Client” (collectively “the Parties” or individually the “Party”), the services and deliverables are detailed in the Proposal. The offer outlined in our Proposal is open for acceptance by the Client for a period of 30 days after which the offer shall lapse, unless otherwise notified by the Service Provider.

1 The Agreement

1.1 The agreement made by the Parties comprises:

- 1.1.1 The Service Provider’s Proposal as referred to in the Client Authorisation Form (the “Proposal”),
- 1.1.2 the Schedule of Charges where one has been included in the Proposal,
- 1.1.3 the Client Authorisation Form and
- 1.1.4 these terms and conditions,

collectively the “Agreement” and shall be interpreted in the above order of priority in the event of any inconsistency or conflict with documents appearing later in the list taking priority over documents appearing earlier in the list.

1.2 The Agreement shall be deemed accepted by the Client upon the first of (i) the Client’s signature of the Agreement, (ii) the Client’s instruction to commence work, (iii) the Service Provider starting work at the Client’s site or (iv) the Client’s payment of any agreed fee.

1.3 Variations or additions to the Agreement can be made. However, both Parties must agree to the variation or addition in writing.

2 Provision of Services and Deliverables

2.1 The Service Provider warrants that it will perform the services described in the Proposal with reasonable skill and care and in a good and workmanlike manner. The standard by which the performance of the services will be measured is the professional standard expected of an experienced provider of consultancy services.

2.2 The Service Provider will use consultants with appropriate skills and experience for the provision of the services. The Service Provider may substitute consultants with alternative consultants or subcontractors with suitable experience and skills should the need arise.

2.3 The Service Provider agrees to deliver the services and deliverables within a reasonable time. Both parties will use all reasonable endeavours to meet any target date, project plan or time table referred to in the Agreement.

2.4 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client’s acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

2.5 The Client accepts that the Service Provider has other clients for whom the Service Provider may or may not deliver services during the provision of services for the Client.

2.6 The Client is under no responsibility to find the Service Provider additional work. In the same manner, the Service Provider is under no obligation to accept any additional work presented to it by the Client.

2.7 The relationship between Client and Consultant will be that of customer and supplier. Nothing in this agreement shall create an employer-employee relationship between the Service Provider and the Client. The Service Provider shall have no right to any of the Client’s employee benefits including, but not limited to, health and accident insurance, life insurance, pensions, sick pay and/or vacation.

3 Client's Obligations

- 3.1 The Service Provider will need access to the Client's facilities, information and resources for and during the provision of the services. The Client, without charge to the Service Provider, will provide access to these to the extent reasonably requested by the Service Provider and shall co-operate with the Service Provider to the extent reasonably required to achieve the objectives set out in the Agreement. The Client shall further make decisions and inform the Service Provider of the results of those decisions when the Service Provider reasonably requests it to do so for the Service Provider's performance of the services.
- 3.2 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Service.
- 3.3 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible and in line with the specification of the Services provided in the Agreement.
- 3.4 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 3.5 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 4 of the Agreement shall not be the responsibility or fault of the Service Provider.

4 Fees and Payment

- 4.1 The Agreement sets out the proposed fees, costs and expenses for the services. Fees based on time and materials or on an estimate do not constitute a fixed price.
- 4.2 All fees, costs and expenses referred to in the Agreement are exclusive of VAT, sales and similar taxes of any kind.
- 4.3 The Client shall pay all fees, costs and expenses related to the services upon presentation of the Service Provider's invoice.
- 4.4 In the event that invoices are not paid within 30 days from presentation of the invoice, the Service Provider will be entitled to suspend performance of the services and / or to charge interest on any outstanding amount.

5 Confidentiality

- 5.1 In this section "Confidential Information" means any information (in whatever form) which is of a confidential nature and which relates to a Party's business or that of its group companies (for the purposes of this Agreement, a group company is a company controlling, controlled by or under common control with a Party to this Agreement), the provision of the services or the Agreement and which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") or which the Receiving Party learns during the provision of the services or otherwise as a result of entry into this Agreement.
- 5.2 The definition of Confidential Information does not include any information:
 - 5.2.1 which is already known by the Receiving Party without an obligation of confidence; or
 - 5.2.2 which is or comes into the public domain without breach of this Agreement; or
 - 5.2.3 which is independently developed or created by the Receiving Party without use of the Confidential Information supplied; or
 - 5.2.4 lawfully received from a third party without obligation of confidence.
- 5.3 The Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care as it treats its own confidential information and, as a minimum, with reasonable care.
- 5.4 During the provision of the services and for five (5) years from completion thereof or other termination of this Agreement, the Receiving Party agrees that it will:
 - 5.4.1 keep the Disclosing Party's Confidential Information confidential; and
 - 5.4.2 subject to clause 5.5 below not disclose such Confidential Information to any third party.

- 5.5 The prohibition referred to in clause 5.4.2 above will not apply where disclosure of the Confidential Information is:
- 5.5.1 Reasonably required by a company within the same group;
 - 5.5.2 Reasonably required by the parties' advisors or sub-contractors;
- Provided that any disclosure as a result of the exceptions in clauses 5.5.1 and 5.5.2 above will only be made if such third party is under a no less onerous obligation of confidentiality than as set out in this Agreement.
- 5.5.3 Reasonably required if as part of the provision of the services the Client requires the Service Provider to work with any third party supplier or other group company of the Client;
 - 5.5.4 Required by a court or by law or by a regulatory authority. The Receiving Party shall give as much notice to the Disclosing Party as is reasonably practicable in the circumstances, and the Receiving Party shall assist the Disclosing Party in limiting the extent of such disclosure;
 - 5.5.5 Consented to in writing by the other Party.

6 Liability, Indemnity and Exclusions

- 6.1 Each Party accepts liability for physical damage to or loss of the other Party's tangible property, if the damage or loss is due to its negligence or breach of contract. For the purposes of this clause, liability will be limited to the sum defined therein.
- 6.2 In respect of any liability other than those falling within clause 6.1 above, each Party's total liability arising out of or in connection with the Agreement shall not exceed in aggregate 150% of the total fees payable by the Client under this Agreement.
- 6.3 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for:
 - 6.3.1 Any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party.
 - 6.3.2 Any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature.
 - 6.3.3 Any punitive or exemplary damages.
- 6.4 Nothing in this Clause 6 shall affect or limit the Client's obligation to pay sums properly due under the Agreement.
- 6.5 The express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 6.6 The Service Provider shall ensure that it has in place at all times suitable and valid insurances including public liability insurance
- 6.7 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.

7 Intellectual Property and Rights of Use

- 7.1 Intellectual Property ("IP") means all forms of intellectual property, including, without limitation, property in and rights under copyright, patents, conceptual solutions, circuit layout rights, performance rights, design rights, designs, database rights, trade names, trademarks, service marks, methodologies, ideas, processes, methods, tools and know-how and entitlement to make application for formal (or otherwise enhanced) rights of any such nature.
- 7.2 IP and rights to IP owned by either Party on the date of the Agreement or created outside the terms of this Agreement and all modifications thereto and derivative versions thereof created during the services ("Background IP") shall remain the property of that Party.
- 7.3 The Client hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow the Service Provider to perform its obligations under the Agreement.
- 7.4 IP created or developed by the Service Provider within the provision of the services ("Foreground IP") and rights to such IP will be owned by the Service Provider.
- 7.5 Upon completion of the services and on receipt of payment in full by the Service Provider, the Service Provider will grant to the Client a royalty-free, non-exclusive, non-transferable licence to use any Foreground IP and the Service Provider's

Background IP as required to allow the Client to use the deliverables produced by the Service Provider for the objectives set out in the Agreement.

7.6 The licence referred to in clause 7.5 will be terminable by the Service Provider if the Client uses or seeks to use the Foreground IP and the Service Provider's Background IP for purposes other than those described in clause 7.5.

7.7 The Service Provider warrants that to the best of the Service Provider's knowledge and belief the results of the services shall not infringe the copyright of any third party.

8 Forecasts and Recommendations / Third Party Services

8.1 Statements made by the Service Provider relating to the services, and all surveys, forecasts, recommendations and opinions (together "Forecasts") in the Agreement, or any report, presentation or other communication are made in good faith on the basis of information available at the time and such Forecasts are addressed only to the Client. Whilst the Service Provider will use reasonable skill and care in the preparation of such Forecasts, they cannot be considered a representation, undertaking or warranty as to outcome or achievable results.

8.2 Implementation of the results of the services and the Client's completion of any Client project of which the services form part may require the involvement or supervision of or giving advice to third parties engaged by the Client. The Service Provider strongly recommends that the Client obtain independent advice before entering into any legally binding commitment with any such third parties.

8.3 The Service Provider may, during its performance of the services, make statements about or recommendations of third party software, equipment or services. No warranty shall be attributable to the Service Provider with respect to such software, equipment or services, and the Client shall look solely to the warranties and remedies provided by any such third party with whom it may contract.

9 Termination

9.1 Either Party may at any time and without cause terminate the Agreement on giving 7 days written notice of termination to the other Party.

9.2 Upon termination under clause 9.1, the Client shall pay the Service Provider all sums due in respect of the services provided and expenses incurred prior to termination.

9.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.

9.4 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and has failed to remedy the breach within 15 days of receipt of a written notice from the other Party identifying that the breach has occurred.

9.5 Involvement by either party in unethical business practices shall always be considered a material breach which is not capable of remedy. Such practice includes, but is not limited to, either party or anyone acting on a party's behalf (with or without the knowledge of that party):

9.5.1 engaging in any unethical or illegal activities in connection with the project or any agreement related to the project;

9.5.2 offering or giving any bribes or gifts to any individual or organisation involved in any way with the project;

9.5.3 requesting or accepting any bribes or gifts from any individual or organisation involved in any way with the project;

9.5.4 offering or paying any commission or other payment to any individual or organisation involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other party and, where applicable, any end-client in advance; or

9.5.5 accepting any commission or other payment from any individual or organisation involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other party and, where applicable, any end-client in advance.

9.6 Termination shall not affect any accrued rights or liabilities arising out of the Agreement.

10 Non-Solicitation

- 10.1 The Client shall not, during the provision of the services, employ or offer employment to any member of the Service Provider's project team, unless mutually agreed otherwise by exception.

11 Data Protection

- 11.1 Each Party warrants to the other that it has complied with and will continue to comply with the provisions of the Data Protection Act 1998 in relation to the Agreement.

12 Third Party Rights

- 12.1 No person or entity other than the Client shall have any rights to enforce any of the terms of the Agreement against the Service Provider.
- 12.2 The Service Provider does not accept any liability, howsoever arising, under the Agreement to any person or entity other than the Client.

13 Assignment

- 13.1 Neither Party shall assign the Agreement without the other Party's prior written consent (not to be unreasonably withheld or delayed).

14 Publicity

- 14.1 The Client agrees that the Service Provider may:
- 14.1.1 Refer to the Client on its client lists.
- 14.1.2 Refer to the nature of the services contracted for provided that the Client is not identified.
- 14.2 Neither Party shall make any statement about the services to the press or the public without the other Party's written consent.

15 Waiver

- 15.1 No term or provision of this Agreement will be considered waived by either party, or breach excused by either party, unless such waiver or excuse is in writing signed on behalf of the party against whom such waiver or excuse is asserted. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy. The waiver by either party of any breach or default under this Agreement shall not constitute a waiver of any other or subsequent breach or default.

16 Notices

- 16.1 Where the Client is required to give notice in writing to the Service Provider, the notice must be addressed to the individual who signed the Agreement.
- 16.2 Where the Service Provider is required to give notice in writing to the Client, the notice will be addressed to the person who signed the Agreement (or that person's successor) at the address stated in the Agreement (or current place of business if the Service Provider knows this to be different).
- 16.3 All notices in writing must be sent by post or delivered by hand to the addressee.
- 16.4 In the absence of evidence of earlier delivery:
- 16.4.1 A notice sent by post will be deemed to have been served two business days after posting.
- 16.4.2 A notice delivered by hand will be deemed received on delivery.

17 Force Majeure

- 17.1 Neither the Service Provider nor the Client will be liable for any failure to perform their obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside their reasonable control.

18 Severability

- 18.1 If any provision or part of a provision of the Agreement is held to be invalid, illegal or unenforceable that part shall be severed and the remaining provisions shall continue to be valid and enforceable as if the Agreement had been executed with the invalid provision omitted.

19 Disputes

- 19.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 19.2 if negotiations under sub-Clause 19.1 of the Agreement do not resolve the matter within 10 working days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 19.3 If the ADR procedure under sub-Clause 19.2 of the Agreement does not resolve the matter within 10 working day of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 19.4 The seat of the arbitration under sub-Clause 19.3 of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 19.5 Nothing in Clause 19 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 19.6 The decision and outcome of the final method of dispute resolution under Clause 19 of the Agreement shall be final and binding on both Parties.

20 Entire Agreement

- 20.1 This Agreement constitutes the entire and only agreement in relation to the services and deliverables and supersedes all prior agreements, representations, understandings or discussions. Any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document do not form part of this Agreement. The Client acknowledges that any agreement, representation, understanding or discussion it wishes to rely upon has been recorded in the Agreement. The Client acknowledges that no reliance has been placed upon any agreement, representation, understanding or discussion that has not been embodied in this Agreement.

21 Applicable Law & Jurisdiction

- 21.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 21.2 Any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the English Courts.

