

General Terms and Conditions



innovocom

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1 Terms and Conditions of Trading

1.1 Definitions

In this Agreement the following terms shall have the following meanings:

“innovecom” Catalyst Services Limited t/a innovecom of Brig House, 11 Ebdon Road, Worle, Weston Super Mare. BS22 6UB. (Company No. 3308904).

“Client” means the customer specified in Schedule A.

“Client Material” means all equipment, software, data, documents, information and anything else of any nature whatsoever which: (i) the Client has provided in connection with this Agreement; or (ii) which innovecom has obtained in the course of providing the Services.

“Commencement Date” the commencement date of this agreement as detailed in Schedule A

“Confidential Information” means all information that each party either provides to the other, which is expressed to be confidential, or by its very nature is confidential.

“Discretionary Services” means the services listed in Schedule C to be provided to the client at innovecom’s discretion.

“the Equipment” means the equipment specified in Schedule B.

“the Enhancement” or “the Upgrade” means the addition to and/or any other changes to the technical specification or configuration of the Equipment listed in Schedule B.

“the Fee” means the charge specified in Clause 3.4 and Schedule A together with any additional charges which may become payable pursuant to Clause 3.5.2 or following the provision of any agreed Discretionary Services listed in Schedule C.

“IT Systems and Infrastructure” means industry standard hardware, operating systems and general office software and communications. This excludes any project, client or market specific hardware and software.

“Intellectual Property” means all rights in any country or jurisdiction in patents, inventions, trade secrets and other rights in know-how, copyright (including by extension the renewals), rights affording equivalent protection or copyright, data rights in databases, registered designs, design rights, industrial designs and utility models, trademarks, trade names, business names, trade address, logos, domain names in all registration or applications to register any of the foregoing items.

“the Renewal Date” means the date on which the Term (or any renewal of the Term) expires as referred to in Schedule A.

“the Services” means the services described in this Agreement to the Equipment detailed in Schedule B.

“the Term” means the duration of the Agreement as referred to in Schedule A.

References to statutory provisions include all modifications, re-enactments and all subordinate legislation made to or under the relevant statute.

1.2 Previous Agreements

This Agreement contains the entire and only agreement and shall govern the relationship between the parties from the Commencement Date in substitution for all previous agreement and arrangement, whether written, oral or implied between the parties, all of which shall be deemed to have been terminated by consent with effect from the Commencement Date

The parties acknowledge that in entering into this Agreement, they have not relied on any representation or undertaking, whether oral or in writing except as expressly incorporated into this Agreement. innovecom shall not be liable for any misrepresentation by it before the Commencement Date made innocently or negligently.

1.3 The Services

3.3.1 innovecom shall provide the Services to the Client during the Term.

3.3.2 The Services to be provided to the Client consist telephone and/or on-line and/or on-site support of the Equipment and resulting IT Infrastructure.

3.3.3 The Client agrees to commission innovecom to carry-out any upgrades or new equipment installation work - regardless of whether the equipment is purchased by innovecom. Such work will be charged at rate that is agreed and fixed in advance. Under no circumstances should the Client or third party complete any installation, substitution, repair or re-configuration without consulting innovecom.

3.3.4 If the client installs, adds, substitutes or repairs equipment themselves then innovecom reserves the right to undertake an inspection and commission a satisfaction report by one of our consultants on the following conditions:

a If the inspection reveals the changes to the Equipment to be in good working order then Schedule B of this agreement can be updated where necessary, or

b Where the changes to equipment are not, in the sole opinion of the innovecom consultant, in good working order, any subsequent fault calls that are as a result of incorrect setup and/or



- configuration will not be covered by this Agreement and any remedial work will be subject to the rates in force at the time, or
- c Where the changes to equipment are not, in the sole opinion of the innovecom consultant, in good working order, then innovecom shall notify the client and if agreed innovecom will complete any required remedial work. Such inspection and remedial work is to be charged to the Client at the rate in force at the time by innovecom and any required hardware and/or software supplied shall be charged at the then current prices.
- 3.3.5 In the event of the Client requiring innovecom to provide the Services to additional equipment, then such equipment shall be subject an audit before being added to Schedule A of this agreement. Where the audit highlights required work, this shall be quoted for, agreed and must be completed before the new Equipment can be added to Schedule A. Equipment supplied and installed by innovecom is not subject to this audit.
- 3.3.6 The Client may be supported for sector specific software by a third party. From time to time, it may be necessary for third parties to carry out upgrade work. innovecom will be pleased to provide chargeable technical support during such upgrades. In the event that such technical support is not requested, any remedial technical support activity resulting from the work on the application by the third party will be chargeable at the daily rate.
- 3.3.7 innovecom guarantees that it will perform the Services with reasonable skill and care and will exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or similar circumstances.
- 3.3.8 If there is a failure or deficiency in the supply of the Services by innovecom, the Client shall always provide innovecom with a reasonable opportunity to correct such failure or deficiency.
- 3.3.9 innovecom makes no additional charges for telephone calls, or on-line activity or site visits associated with resolving problems.
- 3.3.10 The Agreement is not a warranty on physical equipment. innovecom recommends that its clients take out manufacturers' extended warranties on new equipment. To provide the best availability of spare parts, innovecom recommends acquisition of equipment from the best quality manufacturers. In the event of hardware failure if the failed hardware was under warranty, innovecom will diagnose the problem and liaise with the manufacturer under the terms of that warranty and use reasonable endeavours to obtain a replacement, refund or other appropriate remedy in accordance with the terms of such warranty. In a non-warranty situation, innovecom shall use reasonable endeavours to source the necessary replacement hardware from an appropriate supplier. innovecom shall only source hardware from reputable suppliers and all hardware sourced by innovecom shall have a manufacturer's warranty. As the hardware is supplied by third parties, innovecom cannot give any warranty to its quality and shall not be held liable in event of a hardware failure. Charges for the replacement parts will be passed on to the client.
- 3.3.11 In any given break/fix scenario, innovecom shall make reasonable endeavours to resolve the issue in the most expedient manner possible. Where necessary and agreed between innovecom and the Client, the resolution may be completed out of normal support hours.

1.4 Discretionary Services

- 3.4.1 Where the client is scheduling work to be completed out of normal offices hours, innovecom can provide additional support cover. This service is available on request and is chargeable.
- 3.4.2 Work completed out of hours on an evening or on a Saturday is charged at time and a half. Sundays and Bank Holidays are chargeable at double time. All prices are subject to VAT at the published rate at the time of invoice.
- 3.4.3 innovecom are able to provide support agreement clients with skilled on-site personnel to provide cover for holidays, projects, system moves, office moves etc. innovecom will provide, upon request, quotations for this service based upon the specific requirements of the customer.
- 3.4.4 innovecom is recognized within the IT industry as a Value Added Reseller of IT hardware and software and will be pleased to quote for additional any additional and/or replacement hardware and/or software that may be required by the Client.

1.5 Fees

- 3.5.1 The Fee payable by the Client to innovecom shall be paid as set out in Schedule A.
- 3.5.2 If in the opinion of innovecom, the Services are required by the Client as the result of any misuse or neglect of, or other third party hardware and/or software and/or support, or due to the Client not adhering to Clauses 3.8.1 to 3.8.4 inclusive, innovecom reserves the right to charge an additional Fee in relation to the provision of the Services. Please refer to the innovecom Professional Services Rate Card in Schedule C.
- 3.5.3 innovecom reserves the right to charge an additional Fee for any remedial work to a system that has been moved to a new location and not installed by innovecom, if innovecom shall reasonably determine that the problem was caused by the transportation or the reinstallation of the system.
- 3.5.4 In the event of an additional Fee becoming due, those fees will be charged at such rates as defined in the innovecom Professional Services Rate Card in Schedule C.
- 3.5.5 All invoices rendered by innovecom shall be paid by the Client in full (without any set-off or other deduction) within 28 days of the date of the invoice, unless a special arrangement has been agreed and is stated herein.



- 3.5.6 If payment is not made on or by the due date, innovecom shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 3% above the base rate in force at the time of the HSBC Bank from the due date until the outstanding amount is paid in full.
- 3.5.7 In addition to innovecom's other rights, it may (by notice in writing) suspend the Services and/or terminate this Agreement if any invoice raised by innovecom is overdue.
- 3.5.8 innovecom reserves the right to charge reasonable expenses. Expenses shall be invoiced and paid in accordance with Clause 3.5.5.
- 3.5.9 All hardware, software and licenses purchased by innovecom on behalf of the Client remain the property of innovecom until the Client had paid in full any sums owing to innovecom under this Agreement. Where sums owed remain unpaid, innovecom reserves the right to enter the Clients' premises to recover innovecom's property.
- 3.5.10 Where the Client disputes the fees charged or the Services received from innovecom the amount in dispute and the reasons for it must be raised in writing by a Director of the Client to a Director of innovecom within seven (7) days of the date on which payment is expected.
- 3.5.11 Where the Client withholds monies owing to innovecom because it genuinely disputes the amount of an invoice or quality of the Services, innovecom shall not charge interest.
- 3.5.12 Should any dispute fail to be resolved to the satisfaction of both innovecom and the Client, both parties agree to engage the mediation services of The Independent Dispute Resolution Service (www.idrs.ltd.uk) as an arbitration service recognized by the British Computer Society.

1.6 Upgrades and Enhancements

- 3.6.1 Where Upgrades or Enhancements are made to the Equipment by the Client they shall be deemed to be included in the definition of Equipment in Clause 3.1 and shall become subject to the terms of the Agreement for the unexpired Term of the Agreement from the date of the Upgrade or Enhancement.
- 3.6.2 The Fees shall be increased to such sum as innovecom shall require to take account of the Upgrade or Enhancement referred to in Clause 3.6.1 above.
- 3.6.3 The Client will notify innovecom in writing forthwith of any Upgrade or Enhancement made to the Equipment which is installed by any third party. Upgrades and Enhancements made to the Equipment pursuant to Clause 3.6.1 shall be included within the definition of Equipment in Clause 3.1 and shall only become subject to the terms of this Agreement upon a satisfactory report by an innovecom consultant on the effect of the Upgrade or Enhancement on the Equipment.
- 3.6.4 The inspection and report referred to in Clause 3.6.3 shall be charged to the Client at the rate specified by innovecom from time to time and shall be paid in addition to the sum referred to in Clause 3.6.2.

1.7 Exclusion of liability

- 3.7.1 innovecom shall not be liable for the loss or damage arising from any physical stoppage or breakdown of the Equipment or any other stoppage or breakdown that is a result of a third party attributable fault.
- 3.7.2 innovecom shall not be responsible for any consequential loss resulting from breakdown of the Equipment, loss of the Equipment, loss of or corruption of data, cost of recovering software and/or data, damage to consumables or media or otherwise whatsoever.
- 3.7.3 innovecom shall not be liable for manufacturer's defects or the resultant use thereof.

1.8 Care of Equipment

- 3.8.1 The Client shall at his own expense give innovecom full and prompt access to the Equipment to enable innovecom to provide the Services.
- 3.8.2 The Client shall take care of the Equipment and shall operate it in a suitable environment as recommended by the manufacturers of the Equipment.
- 3.8.3 The Client will operate the Equipment with a suitable power supply free from surges and fluctuations as recommended by the manufacturer of the Equipment.
- 3.8.4 No alterations shall be made, parts fitted, adjustments made, or repairs carried out to any parts of the Equipment except with the prior consent of innovecom.

1.9 Obligations of innovecom

- 3.9.1 In consideration of the payment detailed on Clause 3.5 of this Agreement, innovecom shall provide the Client with the Services listed in Clause 3.3. Services listed in Clause 3.4 may be provided at innovecom's discretion. innovecom may, at its discretion, provide a quote for any of the services listed in Clause 3.4 and may, at its discretion, carry out those services at the request of the Client.
- 3.9.2 The provision of the Services is based on the information provided by the Client, including but not limited to number of staff, location and type of IT systems and infrastructure. Should any information on which the provision of the Services is based be or become inaccurate, innovecom reserves the right to



- review the provision of the Services. innovecom shall consult with the Client about any suggested changes to the Services.
- 3.9.3 innovecom and the Client shall agree any revisions to the Services and to the fees for the any revised services in writing by a Director of each party.
- 3.9.4 Revised services and fees shall start on the 1st day of the month following the changes to the Agreement as detailed in Clause 3.9.3 or alternatively on a date to be agreed in writing by innovecom and the Client by a Director of each party.
- 3.9.5 innovecom shall not make any major changes to the Client's IT Systems and Infrastructure without obtaining the written consent of the Client.

1.10 Obligations of the Client

- 3.10.1 It is the Clients' responsibility to ensure that it has procedures in place to ensure its staff is using the Internet and IT infrastructure responsibly. innovecom would be pleased to advise on such procedures. innovecom reserves the right to charge for remedial work resulting from irresponsible or malicious use of the internet or the Clients' IT infrastructure.
- 3.10.2 The Client shall:
- 3.10.2.1 provide innovecom (and its agents and sub-contractors) with such information, co-operation, assistance, facilities and computer resources as it reasonably requires enabling it to perform the Services;
 - 3.10.2.2 prepare the premises for installation of the Equipment to be worked on by innovecom;
 - 3.10.2.3 give prompt attention to any matter raised by innovecom relating to Client's obligations and the performance of the Services;
 - 3.10.2.4 comply with any laws and regulations applying to the Client's business and;
- 3.10.3 To the extent that the Client does not fulfil its responsibilities under the Agreement, then (without prejudice to innovecom's rights and remedies):
- 3.10.3.1 innovecom reserves the right to charge the Client for resources assigned to performing the Service even if not utilised;
 - 3.10.3.2 innovecom reserves the right to change the scope of the services or any timetable for their performance (but innovecom shall consult with the Client and reasonably in doing so);
 - 3.10.3.3 innovecom's Fees and any estimates may be affected; and
 - 3.10.3.4 innovecom will be relieved of its obligations to the Client to the extent that innovecom is prevented from performing the Services in accordance with the Agreement.
- 3.10.4 The Client shall provide clear, full and accurate instructions and disclose all relevant information. innovecom shall not be held liable for any damage resulting to the IT Systems and/or Infrastructure as a result of any inaccurate instruction or omission of information by the Client.

1.11 The Term and Termination

- 3.11.1 Subject to Clause 3.11.2 the terms of this Agreement shall commence on the date as stated in Schedule A. The Agreement will be renewed automatically at the end of the Term for a period of time equivalent to the term unless written notice to contrary is received from the Client no less than 30 days before the Renewal Date.
- 3.11.2 Without prejudice to any other right or remedy contained in this Agreement, innovecom will have the right to terminate this Agreement:
- A in the event of the non-payment by the Client of any sums due to innovecom pursuant to this Agreement
 - or B if the provisions contained in Clauses 3.8 and 3.10 are materially breached
 - or C if the Client shall be liquidated, wound up or have a petition for winding up presented against it or have its assets sequestered or pass a resolution for winding up or summon a meeting to pass any such resolution or have a Receiver or Administrator appointed or if the Client shall convene a meeting of its creditors or execute a Deed of Trust or Assignment in favour of or enter into or attempt to enter into any arrangement or composition with its creditors or if any steps should be taken to levy a stress or if a distress should be levied or threatened to be levied on any goods of or in the possession of the Client of rent rates or taxes or if any steps should be taken by a judgment creditor of the Client to levy execution of other legal process upon the goods of or in the possession of the Client.
- 3.11.3 The termination of this Agreement (whether under this Clause or otherwise) shall not relieve either party of any obligation already incurred under this Agreement and failure by innovecom in any one or more instances to terminate this Agreement on account of any default or breach by the Client shall not constitute a waiver of the same or of any default or breach
- 3.11.4 Upon termination or expiry of this Agreement, however caused:
- 3.11.4.1 The Client shall pay all Fees and other charges payable (including Fees set out in Schedule A in their entirety) forthwith without deduction or set off any such amounts; and
 - 3.11.4.2 Termination or expiry shall not affect any accrued rights or liabilities of either Party at the date of termination or expiry.
- 3.11.5 In the event of a termination of this Agreement, innovecom shall use reasonable endeavours to cooperate with any third party nominated in writing by the Client to achieve a smooth handover of the services to that third party and/or the Client.



- 3.11.6 In the event of a termination of this Agreement, the Client shall use reasonable endeavours to cooperate with innovecom and to ensure cooperation of any third party with innovecom to achieve a smooth handover of the services to the Client and/or the third party nominated in writing by the Client.
- 3.11.7 Planning to ensure a smooth handover shall begin on the date the Client servers notice under this Agreement on innovecom.

1.12 Confidentiality and use of information

- 3.12.1 Each party shall, in relation to the other's Confidential Information (and except as required by law or regulatory body): keep it secret and confidential; use it only for purposes connected to this Agreement and shall not disclose it to third parties without the other's prior written consent.
- 3.12.2 Each party shall, in receipt of a written request, either return or destroy the other's Confidential Information in its possession except that each party shall be entitled to keep copies or records for archive purposes (and such copies shall continue to be Confidential Information).

1.13 Cancellation

Where the Client books installation work and/or Services and subsequently wishes to cancel the same (either temporarily or permanently), the Client shall provide innovecom with at least 48 hours notice of such cancellation. Failure to provide such notice will incur a cancellation charge equivalent to 50% of the Services value and shall immediately become due and payable.

1.14 General

- 3.14.1 All goods remain the property of innovecom until payment has been made in full.
- 3.14.2 This Agreement shall not be assigned or transferred in any manner by the Client without the prior written consent of innovecom and any such assignment or transfer shall not excuse either party from liability for the due performance and observance of any provision expressed herein on their part to be observed or withheld. The Client shall be entitled to assign or transfer the benefit of the Agreement.
- 3.14.3 The Client hereby waives all and any existing and future claims and rights of set-off against any payment due hereunder and agrees to pay the Fees and other amounts due hereunder regardless of any equitable set-off or cross-claim the Client may have against innovecom. Any dispute shall be resolved in accordance with Clause 3.5.12.
- 3.14.4 The foregoing Terms and attached Schedules shall form the entire maintenance agreement between the Client and innovecom and may only be amended or supplemented in writing executed jointly by an authorized representative of the Client and an authorized representative of innovecom.
- 3.14.5 innovecom reserves the right to sub-contract the maintenance of any part of or all of the Equipment to third parties subject to agreement with Client which shall not be unreasonably withheld.
- 3.14.6 The invalidity or unenforceability of any particular provision of the Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.
- 3.14.7 Any notice or other documentation to be given by delivering the same by hand or by sending the same pre-paid registered post, facsimile or email to the address of the relevant party set out in this Agreement or to such other address as such party may be have notified in writing to the address as such party may have notified in writing to the other. Any notice delivered by hand shall be deemed delivered the same working day and any notice sent by post shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two working days after dispatch, and in proving the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice sent by facsimile shall be deemed to have been delivered on the first working day after its dispatch. The working day shall be construed as Monday to Friday 09:00 to 17.30 hours, excluding Public and Bank holidays.
- 3.14.8 No term of this Agreement is intended expressly or by implication or other inference to purport to confer a benefit or right of action upon any third party. No such third party (whether or not in existence at the date of this Agreement) is named or described herein. The Contracts (Rights of Third Parties) Act 1999 is expressly excluded to the fullest extent permitted by law.
- 3.14.9 This Agreement shall be governed and construed in accordance with the Laws of England and the parties submit to the jurisdiction of the English Courts.
- 3.14.10 All errors and omissions are excluded.

1.15 Indemnity and Liability

- 3.15.1 innovecom undertakes to take out and maintain insurance cover with a reputable insurance company against the liability provided for in Clause 3.15 and shall provide evidence of such insurance to the Client upon demand.



- 3.15.2 The Client shall notify innovecom as soon as is possible of any event which may give rise to a claim against innovecom. In any event, the Client shall notify innovecom of any such event within 3 days.
- 3.15.3 innovecom shall indemnify and keep indemnified the Client against any reasonably foreseeable losses suffered or incurred by the Client, its officers or employees by any negligent act or omission by innovecom or its employees. The parties agree that innovecom shall not be liable for any consequential loss including but not limited to loss of profits, loss of earnings, loss of business and loss of goodwill.
- 3.15.4 innovecom's total liability for all claims arising out of this Agreement shall not exceed £250,000.00.
- 3.15.5 Nothing in the clause excludes liability for personal injury or fraud.

1.16 Force Majeure

- 3.16.1 If either party is prevented If either party is prevented in any way from performing any of its obligations under this Agreement because of matters outside such party's reasonable control including, but without limitation, fire, flood, storm, strike, lock-out or other labour trouble, riot, war or hostilities between any nations, rebellion, accident, acts of God or other similar or dissimilar causes beyond the reasonable control of such party, then the party so prevented from performing shall not be liable for any failure or delay in its performance provided that such party shall give the other party prompt written notice of such failure or delay and the cause therefore and shall use all reasonable means to resume full performance of its obligations as soon as possible.
- 3.16.2 Should an event of force majeure as described above last for more than 30 days, then the party whose rights or benefits have thus been interrupted shall have the right to terminate this Agreement without liability to the other party. The Client shall pay innovecom any sums owing up until the termination date within 10 days of the termination date.
- 3.16.3 Unless this Agreement has been terminated pursuant to this clause or clause 3.11, then upon the cessation of the event of force majeure, both party's obligations hereunder shall resume.

1.17 Non-solicitation

The Client agrees that it shall not during the term of this Agreement and for the period of 12 months thereafter directly or indirectly engage or employ or solicit or cause or encourage any employee of innovecom who has worked with Client to be engaged or employed by the Client or any other party without obtaining prior written permission from Innovecom, except in circumstances where an employee of innovecom applies to a public advertisement placed by the Client (without any encouragement by the Client including, but not limited to, drawing the employee's notice to such an advertisement).