

Terms & Conditions

Upon **TigerTMS Innovation's** acceptance of this executed Customer Service & Software Support Agreement, **TigerTMS Innovation** agrees to provide, and **Partner Customer** (Customer) agrees to purchase and accept services on the Solution subject to the terms and conditions set out below.

1. **Agreement.** This Agreement commences on the Start Dates shown overleaf and shall run for the Initial Term, unless terminated by: i) either party with immediate effect for failure of the other party to remedy a default after having first given 30 days' written notice to the other party; or ii) **TigerTMS Innovation** for failure by Customer to make payment in accordance with the provisions of paragraph 4, or iii) either party if the other shall be unable to pay its debts and has filed for insolvency. This Agreement will renew annually after the expiration of the Initial Term unless the Customer provides **TigerTMS Innovation** with written notice of cancellation at least 30 days prior to the anniversary date. Changes to this Agreement shall be valid only if agreed in writing by both parties. US law shall apply to this Agreement and the US courts shall have exclusive jurisdiction.

2. **Definitions.** In this Agreement the following definitions shall apply; "Operational Times" means 24 x 7 x 365 days a year; "Response Time" means the maximum time which is within Operational Times and which elapses between the time when a service notification is received and the time when **TigerTMS Innovation** carries out any of the actions listed in Paragraph 3(a); "The Solution" means the solution described overleaf or as amended from time to time in writing between the parties.

3. **TigerTMS Innovation's Responsibilities.** Upon Customer reporting an incident, **TigerTMS Innovation** shall i) accept and acknowledge receipt of the incident report by either telephone or email and ii) confirm by telephone that the Customer has carried out the procedures necessary to establish that the incident is not external to the Solution, and as necessary interrogate the system via Remote Access, perform diagnostic routines to determine the exact nature of the reported incident and identify any remedial action required.

Response is as follows:

Remote Premium 24*7*365(6) with 4 hours on Critical Incidents and 8 hours on all other Incidents.

TigerTMS Innovation shall use reasonable efforts to meet the Response Time listed above. The targets for Critical Incidents shall apply to reported incidents where more than 30% of users cannot substantially use the functionality of the Solution and/or Customer cannot substantially conduct its normal business. **TigerTMS Innovation** shall use reasonable efforts to resolve reported incidents within the scope of this Agreement. As part of the **TigerTMS Innovation** Support Program, **TigerTMS Innovation** may deliver, install and commission updates and/or upgrades on to the system, from time to time. **TigerTMS Innovation** shall automatically grant Customer a non-exclusive licence to use such upgrades in association with the system. For the avoidance of doubt, any and all installation and hardware costs associated with such software upgrades will be payable by Customer at **TigerTMS Innovation's** then current charges. **TigerTMS Innovation's** responsibilities under this Agreement apply solely to **TigerTMS Innovation** supplied hardware and licenced software. Expressly excluded from **TigerTMS Innovation's** responsibilities are the Customer network infrastructure, servers and computers. Consumable items (such as batteries, printer ribbons etc) shall not be covered by this Agreement. All parts or replaced units shall become the property of **TigerTMS Innovation**. In the event of an incident being reported to **TigerTMS Innovation** which is found to be external to the Solution or due to an incorrect configuration change made by Customer without **TigerTMS Innovation's** approval, **TigerTMS Innovation** reserves the right to make an additional charge at current service rates. **TigerTMS Innovation** reserves the right to issue a software update to resolve an incident. For the avoidance of doubt the labour and materials required to apply that update shall be subject to an additional charge. **TigerTMS Innovation** is not obliged to provide services for Solutions that are more than one (1) release below the then current release of software or where any element of the Solution is no longer generally supported by either **TigerTMS Innovation** or other manufacturers (e.g. server operating system). For the avoidance of doubt the labour and materials required for those services shall be subject to an additional charge. **TigerTMS Innovation** is not obliged to provide the services on premises other than the Installation Address. **TigerTMS Innovation** reserves the right to audit the Solution before acceptance of this Agreement or at any time during the term of the Agreement in order to verify that the configuration of the Solution is as per the Agreement and is in a serviceable condition. In the event that a previous Agreement has lapsed for a period of more than 90 days, the Customer will be charged a re-enlistment fee of \$500 to re-activate the service.

4. **The Customer's Responsibilities.** Unless otherwise stated overleaf, Customer will be invoiced annually in advance. Invoices are due and payable, in full, prior to the Agreement commencement and anniversary dates. **TigerTMS Innovation** reserves the right to suspend service provision should a Customer invoice remain unpaid. Service fees shall be reviewed on an annual basis and shall be communicated to Customer prior to the renewal date. Customer shall pay for any other services performed which are not covered by this Agreement at **TigerTMS Innovation's** then current service rates and within 30 days of the date of invoice thereof. During the Operational Times, Customer shall provide **TigerTMS Innovation** with a **TigerTMS Innovation**-approved method of remotely accessing the Solution for the purposes of diagnostics and incident resolution, for the duration of the Agreement. Should **TigerTMS Innovation** or its agent be required to attend the site, then on arrival of at the Installation Address, Customer shall; i) provide free access to the Solution and shall provide such reasonable facilities as are required; and ii) make available a suitably qualified and authorised Customer representative at the site at all times whilst the service is being performed and to allow **TigerTMS Innovation** or its agents such access as may be necessary to the Customer's infrastructure. Should such a representative be unavailable, **TigerTMS Innovation** reserves the right to make a charge for a revisit. The Customer shall not permit any person other than **TigerTMS Innovation** personnel or persons authorised by **TigerTMS Innovation** for the purpose to attempt to alter, modify, repair or change the Solution in any way. The Customer shall take all reasonable precautions ensure the health and safety of **TigerTMS Innovation** personnel and the persons authorised by **TigerTMS Innovation** whilst on Customer's premises.

5. **Exclusions and Limitation of Liability.** **TigerTMS Innovation** shall have no obligations under this Agreement in respect of; i) any incidents arising from the installation, which has not been carried out by **TigerTMS Innovation** or its appointed representative; ii) any equipment or software which has not been provided by **TigerTMS Innovation**, such as servers, switches, routers, PCs etc; iii) any part of the Solution which

was defective prior to the Effective Date of the Agreement, iv) equipment which has been subjected to unreasonable physical or electrical stress or excessive temperature levels, v) any incidents arising from misuse, accident or negligence by Customer or any other party. Except where otherwise expressly stipulated in the Agreement the following provisions set out **TigerTMS Innovation's** entire liability (including liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of its obligations arising under the Agreement and any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement. **TigerTMS Innovation's** liability to the Customer for death or injury resulting from its own or that of its employees' or sub-contractors' negligence and all damage suffered by the Customer as a result of breach of the implied statutory undertakings as to quiet possession and freedom from encumbrances shall not be limited. **TigerTMS Innovation** will be liable to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of **TigerTMS Innovation**, its employees, agents and sub-contractors provided that **TigerTMS Innovation's** entire liability in respect of such damage shall be limited to a maximum of \$50,000. **TigerTMS Innovation** will not be liable to the Customer for loss of profits, business, goodwill, anticipated savings or any type of indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party or the unauthorised use of the Solution). **TigerTMS Innovation** will not be liable to the Customer for any loss or damage resulting from any act or omission of the Customer or its other contractors or sub-contractors or its agents or any of them or by any event outside **TigerTMS Innovation's** reasonable control. If the Customer attaches to, or allows any third party to attach to the Solution, any equipment or software not approved by **TigerTMS Innovation** for connection to the Solution, then such attachment and subsequent use shall be at the sole risk and expense of the Customer, and the Customer shall indemnify **TigerTMS Innovation** for any expenses, damages, claims or other costs incurred by **TigerTMS Innovation** as a result of the Customer's said attachment and use. **TigerTMS Innovation** does not warrant or represent that the Solution is, or the services provided under this Agreement will render the Solution, immune from fraudulent intrusion or unauthorised use (including its/their interconnection to long distance networks) and accordingly **TigerTMS Innovation** will not be liable for any loss, damage, cost or expense directly or indirectly occasioned thereby. Customer hereby agrees and confirms that the Customer shall be responsible for identifying the occurrence of any fraudulent or unauthorised activity affecting the Solution. **TigerTMS Innovation** accepts no liability whatsoever, for the un-supervised integration of its voice and data solutions to any other network component and/or third-party software or the specified functionality or continued performance and security measures of any third-party software. While it is accepted that no system can be fully protected against external intrusion, for example, virus infection, worms, etc, **TigerTMS Innovation** strongly recommends that Customer implements sufficient security and housekeeping policies and procedures so as to ensure that **TigerTMS Innovation** solutions within the Customer network are protected from any third-party failure or influence. Nothing in the Agreement shall detract from any of the Customer's rights or **TigerTMS Innovation's** obligations which it is under US law prohibited from seeking to exclude or limit. **TigerTMS Innovation** may assign this Agreement to any other person at any time by giving notice to the Customer. The Customer may not assign this Agreement without **TigerTMS Innovation's** prior written consent, which consent shall not be unreasonably withheld.