

## TERMS AND CONDITIONS OF USE

**Effective:** 4 July 2020.

The Terms and Conditions of Use ("**Terms**") represent a legally binding contract between the company you represent ("**Client**"), as mentioned in the registration flow, and **Innoship Technology SRL**, a Romanian company, headquartered in the Municipality of Râmnicu Vâlcea, Petre Gheorghe Govora Entrance no. 3, attic room 2, Vâlcea County, registered at the Trade Register under no. J38/279/2020, Unique Identification Code 41214354 ("**Innoship**", "**we**", "**us**", "**ours**"), as the service provider.

You, as the Client's representative, represent and warrant to Innoship that: (i) you are the Client's legal or conventional representative, (ii) you have full power to enter into these Terms in the name and on behalf of the Client, (iii) you are not subject to any prohibitions on concluding these Terms in accordance with the applicable law, (iv) the information provided at registration is correct and complete.

Please read these Terms carefully. By accepting the Terms and completing the registration process, the Client agrees to be bound by these Terms and to comply with all obligations under these Terms.

Innoship and the Client shall be hereinafter jointly referred to as the "**Parties**" and individually as the "**Party**".

### 1. DEFINITIONS

"**Affiliate**" means any entity or person which controls, or is controlled by, or which is controlled by an entity or person which controls, one entity, with "control" in this context meaning the ownership directly or indirectly of fifty percent (50%) or more of the participation titles or voting rights in an entity or the ability to direct the management or policies of an entity through ownership of voting shares or other securities;

"**Business Day**" means Monday to Friday, except for legal holidays in Romania, between 9:00 AM and 6:00 PM Eastern European Time (EET);

"**Change of Control**" means any change in the control or identity of a Party, be it direct or indirect, including without limitation, by sale of all or a substantial portion of the assets of such Party, merger, material change in control and management of such Party or otherwise;

"**Confidential Information**" means all information, in whatever form, that is not generally available to third parties or the public, including without limitation, all research, data, specifications, technical information, devices, concepts, compilations, programs, designs, tooling, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, business practices and strategies, financial information, business plans, know-how, inventions (whether patentable or not), techniques, processes,

methods of doing business, software, personnel data, contracts, purchase requirements, forecasts and market strategies, data on equipment sold and serviced, production process plans, product specifications and formulas, methods, technical and product bulletins, surveys, research and development programs, sales reports, or other materials, of any nature or embodiment whatsoever written or otherwise, relating to these Terms, as well as the existence of these Terms and their content;

**“Courier”** means any of the couriers and delivery services available in the Software and used at any time by a Client under their contracts with those couriers or delivery service providers;

**“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**“Infrastructure”** means collectively all software and hardware requirements (e.g., physical server, web server, virtual machines, etc.) which are necessary for installation and optimal operation of the Software. The Infrastructure can be owned, licensed or managed by Innoship;

**“Intellectual Property Rights”** means any registered and unregistered rights in inventions, patents, patent applications, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how, and other trade secrets rights, and all other proprietary rights, derivatives thereof, and all forms of protection of a similar nature under any applicable law, anywhere in the world;

**“Professional Services”** means any consultancy services and/or other professional services (*other than providing access to the Software*) which Innoship may provide to the Client on the basis of a separate agreement, as it will be described in that agreement.

**“Recipient”** means the Party to which Confidential Information is disclosed;

**“Representatives”** means collectively any employees, officers, agents, and representatives, group companies, including subsidiaries and affiliates of a Party;

**“SLA”** means the Service Level Agreement and response times, as described in the annexes;

**“Software”** means the transport software solution, also called a *“multi-carrier shipping software solution”*, developed and owned by Innoship, including any other modules, custom libraries, embedded applications and other customizations and/or updates in the source code provided to the clients as a cloud software application (*Software as a Service - SaaS*). The features, functionalities and specifications of the Software are described in the Tariff Plan and/or Software Documentation, if any;

**“Software Documentation”** means any information, whether in printed form or otherwise, including, without limitation, any requirements manual, technical manual, user manual, instruction manual or any other such information related to the Software, made available by Innoship to the public, if appropriate;

**“Software Terms of Use”** means the terms of use accepted by users designated by the Client at their first interaction with the Software;

**“Tariff Plan”** means the document provided to the Client in the registration flow, an integral part of these Terms, which shows the price for the use of the Software and the available facilities;

**“Terms”** means this Terms and Conditions of Use and includes the annexes, as well as any further amendments agreed and signed by the Parties.

## **2. USE OF THE SOFTWARE**

- 2.1. By accepting these Terms, the Client and, as the case may be, the user, acknowledge and agree that they enter into a contractual relationship with Innoship regarding the use by the Client and the operation by any of the users designated by the Client of the Software provided by Innoship. The Client acknowledges and accepts that Innoship is not an intermediary of the Couriers used by the Client, but only manages, within the limits of the Software's functionalities, the contracts concluded between the Client and each of the Couriers that the Client has activated on the platform based on the contracts agreed with each of them.
- 2.2. At no time will Innoship be considered an agent of any of the Couriers used and activated by the Client through the Software, and Innoship does not accept any responsibility for the performance by the Couriers of the services agreed by the Client with each of them and ordered through the Software. Although it will be able to assist the Client in setting up the Client account, Innoship is not responsible at any time for the correctness or completeness of the data entered by the Client regarding the entity and identifiers of the Client, data, identifiers and user rights (including users with administration rights over the Client's account) or of the relevant data from the contracts concluded by them with the Couriers. The Client is responsible at all times for this data, as well as for updating it in accordance with the agreements concluded with the Couriers, except for proven errors caused by the Software.
- 2.3. Innoship grants the Client a limited, non-exclusive and revocable permission to use the Software, in accordance with the facilities and costs specified in the Tariff Plan, as well as a limited, non-exclusive and revocable license to use the Software Documentation, to the extent strictly necessary to access and use the Software in optimal conditions. To avoid any doubts, except if otherwise provided in these Terms, nothing herein shall be interpreted as to imply any transfer or license of any Intellectual Property Rights of Innoship with regards to the Software.
- 2.4. Access to the Software and any associated features will be granted to the Client in accordance with the commercial specifications agreed in these Terms, Tariff Plan, SLA and/or Software Documentation made available to the Client, if applicable.
- 2.5. Innoship undertakes to ensure the adequate and necessary Infrastructure for the functioning of the Software, shall manage the Infrastructure and shall ensure that the Client has fully functional access to the Software. Any additional support obligations shall be provided and further described in the SLA. The Client remains solely responsible for the implementation of the

software and hardware components necessary for accessing the Software (e.g., installation of a compatible browser, ensuring an internet connection, etc.), as well as for their adequate configuration.

- 2.6. The Client undertakes to use the Software in accordance with the applicable law and regulations and within the limits provided in these Terms, especially the usage limitations provided in Article 3 of these Terms.

### **3. USAGE LIMITATIONS**

- 3.1. The Client undertakes to follow the Software Documentation, as well as any guidelines or policies associated with the Software and made available to it by Innoship in any way. In this respect, the Client shall not misuse or interfere with the Software or try to access the Software using a method other than the interface provided by Innoship or otherwise than in accordance with the instructions and indications provided herein and in the Software Documentation.
- 3.2. The Client is solely responsible for the identification and designation of the Software users, and shall be liable for any breach by the users of the provisions of these Terms and the Software Terms of Use. The Client is responsible to take all reasonable steps to prevent any unauthorized access to the Software, including without limitation by protecting its passwords and other log-in information.
- 3.3. The Client will notify Innoship immediately of any known or suspected unauthorized access to the Software or breach of its security and will cooperate with Innoship to remedy such breach and limit any negative consequences deriving therefrom.
- 3.4. The following actions are restricted to the Client while accessing or using the Software:
  1. to access, tamper with, or use non-public areas of the Software or Innoship's Infrastructure;
  2. to import or copy any local files or data to which the Client does not have the legal right to import or copy in this manner;
  3. to distribute, modify, sell, lease, reverse engineer, decompile or disassemble the Software or any portion thereof, except to the extent permitted by the applicable law or with Innoship's written approval;
  4. to probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures implemented by Innoship;
  5. to access the Software by any means (automated or otherwise) other than through the currently available published interfaces which are provided by Innoship;

6. to interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, by sending a virus, overloading, flooding, spamming the Software.
- 3.5. In any case, the Software should be used according to Innoship's instructions regarding the security measures, by connecting with a username and a password. The Client shall not provide access to any third party and will closely observe any other user access limitations imposed by these Terms or any other instructions or agreements concluded between it and Innoship. For the purpose of this limitation, third party includes any individual other than the one explicitly designated for that access account.
- 3.6. Any breach of the limitations provided hereunder constitutes a breach of the contractual obligations of the Client and may lead to the suspension or termination by Innoship of the agreement concluded under these Terms and to temporary or permanent suspension of the Client's user account. Innoship may audit the use by the Client of the Software, with a 5 days prior notice. The Client undertakes to grant access and give reasonable assistance for the purpose of carrying out such audit, without this affecting, without justification, the course of its normal business.

#### **4. CHANGES TO THE SOFTWARE AND CHANGES TO THE TERMS**

- 4.1. The Client acknowledges and agrees that Innoship may provide regular Software updates, may add or remove certain features of the Software, and may discontinue providing the Software or any component thereof, at any time, for any purpose, for reasons such as optimizing the Software, improving security, complying with laws and regulations, and providing an improved overall user experience. In the event of substantial changes with a negative impact on the Client, the Client will be notified in advance, within a reasonable time, of any such changes, in an appropriate manner in relation to the specific circumstances, *e.g.*, by displaying a notification within the Software, sending a notification to any of the Client's users and/or sending it by any other means of communication, so that the Client can analyze the changes and export the data entered in the Software, if necessary.
- 4.2. The Client acknowledges and agrees that Innoship may make justified changes to these Terms to reflect updates or optimizations to the Software or in other justified cases (*e.g., for law enforcement, security reasons, etc.*). In the event of substantial changes to the Conditions, the Client will be notified in advance, within a reasonable time, of any such changes, in an appropriate manner in relation to the actual circumstances, *e.g.*, by displaying a notification within the Software, transmitting a notification to any of the Client's users or transmitting it by any other means of communication.
- 4.3. The notification is exempted if it is not feasible given the need to act with the utmost urgency in order to remedy any problems identified or to prevent abuse.

- 4.4. To the extent that the Client does not agree with the changes, it may close the user account and stop using the Software. Continued use of the Software after changes were made will constitute acceptance of any changes to the Software or to these Terms.
- 4.5. Subsequent updates will be included in the future as part of the Software's lifecycle and will be provided by Innoship at no additional cost to the Client and without adversely affecting the quality of services, security and/or functionality/availability of the Software.
- 4.6. Innoship will not be liable for any temporary unavailability of the Software or any components thereof caused by necessary updates and/or optimizations.

## **5. PRICE**

- 5.1. The Client undertakes to pay Innoship a price, for each order placed through the Software, the price per order being calculated at the end of each calendar month, regardless of whether it is complete or fractional, depending on the total volume of orders placed through the Software in that month, according to the prices and thresholds provided in the Tariff Plan. To avoid any doubts, the price is owed by the Client for each order processed through the Software (and automatic selection of the best courier) even if no valid AWB is returned, if such order cannot be successfully placed with any courier for reasons not attributable to Innoship. Within the first 5 (five) days of a month, Innoship shall extract the activity report concerning the last month and will issue the corresponding invoice for the activity performed by the Client during that month, compared to the total volume of orders placed by the Client in that month and in accordance with the prices and thresholds provided in the Tariff Plan.
- 5.2. To the extent that the Client, being placed at a higher threshold compared to the total volume of orders placed in the previous month, benefits from certain additional facilities, as provided for in the Tariff Plan, the Client will continue to benefit from them, provided that it exceeds that threshold also in subsequent consecutive months. For the avoidance of doubt, to the extent that in a calendar month the Client does not exceed the threshold that attracted the additional facilities, it will lose them starting with the next calendar month, and will regain them starting with the month following the one in which it exceeded that threshold.
- 5.3. Innoship may decide, in its sole discretion, to offer certain periods of free use of the Software, under the conditions and with the limitations described in the registration flow. The Client may, at any time, opt out of these facilities and use the Software in accordance with these Terms.
- 5.4. Any amounts, owed by the Client under these Terms and the Tariff Plan or other agreements in connection with the use of the Software, will be paid within 15 days of receipt of the invoice.
- 5.5. When the fee is agreed in a foreign currency, other than RON currency, payment of the fee shall be made in that respective currency, unless payment must be made in RON currency under the applicable legal provisions, in which case payment of the fee shall be made by the Client in RON currency, calculated at the exchange rate published by the National Bank of Romania on the date of the issuance of the invoice by Innoship.

- 5.6. In case the Client fails to pay the fee in the term provided in these Terms, it shall pay penalties amounting to 0.1% per day of delay of the outstanding amount. The total value of penalties mentioned above may exceed the amount they are applied on.
- 5.7. Also, without prejudice to the Client's obligation to pay late fees in accordance with Article 5.6, if the Client does not pay the price within the period provided in these Terms, Innoship will have the right to suspend the agreement concluded under these Terms, to temporarily or permanently suspend access to the user account and its use of the Software, until full payment of the amounts due, without any further notice or prior formalities. Restoration of access will be made within a maximum of 5 Business Days from the time the Innoship account was credited with the outstanding amounts.

## 6. INTELLECTUAL PROPERTY

- 6.1. Innoship warrants and represents to the Client, as a continuous warranty throughout the duration of these Terms, that it owns all Intellectual Property Rights and licenses related to the Software necessary to perform its obligations under these Terms.
- 6.2. The Client hereby warrants and represents to Innoship, as continuous warranty throughout the duration of these terms, that it owns all Intellectual Property Rights and/or licenses and complies with all applicable legal provisions related to the use, in any way, of all images, information, data and/or other categories of content and materials uploaded, received, stored or otherwise made accessible through the Software. In this respect, the Client shall keep harmless and shall indemnify Innoship for all costs and damages arising from or in connection with the warranty mentioned herein, if such warranty becomes invalid and/or untrue or is in any way breached by the Client.
- 6.3. As regards the relationship between the Parties, the Client remains the sole owner of any content, including all Intellectual Property Rights with respect to such content, uploaded, received, stored or otherwise made accessible through the Software.
- 6.4. The Client grants Innoship a free and non-exclusive, geographically unlimited license for the entire duration of the Terms for the use, reproduction, modification and/or distribution of any content protected by Intellectual Property Rights and uploaded, received, stored or otherwise made available through Software, strictly for the purpose of providing access to the Software.
- 6.5. With respect to the Client's name, trade names and trademarks ("**Trademarks**"), the Client grants Innoship a free, non-exclusive, global license to use, reproduce, display, distribute, adapt, modify, create derivative works and to operate in any manner, any of the Trademarks, under the following conditions:
  1. Its use does not affect the image or reputation of the Client, unless the specific use has been approved in advance by the Client;

2. Innoship will not modify any of the Client's Trademarks, other than by resizing while maintaining the proportions, for the purpose of presentation in the Software, the Innoship website or in any other communications of Innoship;
  3. Innoship will comply with and fulfill any request for the cessation of a specific use, within a reasonable time, unless the Client is not reasonably able to remove a specific use, for example, through the technical functionalities available to it as a user of the Software.
- 6.6. The Client declares and acknowledges that any feedback, ideas or suggestions related to the Software may be used without any limitation or any payment of a price. Any materials protected by Intellectual Property Rights derived from such feedback, ideas or suggestions will be the sole ownership of Innoship. Innoship shall have the right, in any possible manner, to use free of charge, disclose, display, distribute, reproduce, modify, exploit, transfer or license any ideas, suggestions, comments or improvements on which the Client, directly or through its agents, may make, regarding any matters, including technical ones, with respect to Innoship's activity or Software.

## **7. TERM AND TERMINATION**

- 7.1. These Terms will apply throughout the entire use of the Software by the Client. The Client may terminate the contractual relationship with Innoship at any time, by ceasing to use the Software and deleting/deactivating the account.
- 7.2. Innoship will be able to terminate these Terms and close the Client's user account in the event that the Client fails to fulfill any of its obligations under these Terms. The termination of the Terms by Innoship may be done without the intervention of the court or other formalities, by simple notice of termination sent to the Client in this regard, and the Terms will cease if the Client does not remedy the violations found in the notification within 15 days of receipt. During the remediation period, Innoship may suspend the Client's access to the Software.
- 7.3. Innoship may unilaterally terminate the Terms, without justification and without payment of damages, by written notice sent to the Client at least 30 days prior to such termination.
- 7.4. Upon the termination of these Terms, all the rights granted to the Client under these Terms shall cease. In this respect, the Client shall cease any and all further uses of the Software and of other Intellectual Property Rights owned by Innoship, shall delete any copies of protected works and shall return any equipment provided by Innoship for the purpose of these Terms, if any.
- 7.5. Upon the termination of these Terms, Innoship shall make available to the Client any content provided by it through the Software. This content will be available for download for a maximum period of 60 days after the termination of the Terms and will be deleted at the expiry of such period, except if further storage is mandatory in accordance with the applicable legal provisions.

## **8. LIMITATION OF LIABILITY, DAMAGES AND PENALTIES**



- 8.1. To the fullest extent of the applicable law, and in accordance with the specifications in the SLA, Innoship shall not be liable to the Client for: (i) any failures and/or errors in the services provided by third parties in relation to the Software, including, but not limited to any providers of cloud services, hosting platforms, applications of the couriers, etc.; (ii) any malfunctions caused by the Client or derived from an improper use by its users of the Software.
- 8.2. Furthermore, Innoship shall not be liable for the impossibility to register the order with the couriers, for any reasons other than errors in the Software, nor for the accuracy of the data within the orders uploaded by the Client in the Software and further transmitted by the Software to the couriers.
- 8.3. To the fullest extent of the applicable law, the maximum aggregate liability of Innoship to the Client under or in connection with the Terms, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to the total price paid to Innoship during the 12 months prior to the damages claim.
- 8.4. The Parties must take reasonable steps to mitigate any loss or damage, cost or expense they may suffer or incur arising out of anything done or not done by the other Party under or in connection with the Terms.

## **9. NO WARRANTY**

- 9.1. To the maximum extent permitted by the law, the Software is provided “*as is*” and “*as available*”, without any express or implied warranty of any kind. Innoship gives no warranties and makes no representations, without limitation, concerning the quality or fitness for a particular purpose.
- 9.2. Except for the obligations undertaken by Innoship in the SLA, Innoship does not guarantee that the service will be provided without errors, in a timely manner or that access to the Software shall be permanent and uninterrupted.

## **10. ANALYSIS AND MONITORING**

- 10.1. The Client declares and accepts that Innoship may use instruments, scripts, software to monitor and manage the Software and to help resolve the requests from the Client. To avoid any doubts, these instruments will not collect or store any Client's content provided through the Software, except for the case in which is it strictly necessary for providing access to the Software, Professional Services or for resolving the requests of the Client or any other issues with respect to the Software. In this latter case, the Client will be notified within a reasonable term. The statistical information collected in this manner, except for the data and materials which belong to the Client, may also be used for the necessary assistance required to manage Innoship's products and services portfolio, to manage the identification of deficiencies in Innoship's products and services offers, as well as to manage the service packages and the monthly services.

10.2. Furthermore, the Client declares and accepts that Innoship may: (i) compile statistical information and other information regarding the performance, functioning and use of the Software and (ii) may use data from the Software in an aggregated form for the management of security and operations, to create statistical analysis, as well as for research and development purposes. Innoship may publish the analysis, with observing all the legal provisions and while excluding any data of the Client. Innoship reserves all its Intellectual Property Rights regarding all such produced materials.

## 11. PERSONAL DATA PROTECTION

11.1. Aspects regarding the processing of personal data by Innoship in the name and on behalf of the Client, where applicable (the categories of personal data processed, the categories of data subjects, processing purposes, etc.), in the context of performing these Terms, shall be described in the Data Processing Agreement, which forms an integral part of these Terms.

11.2. The Parties undertake to use the Software in accordance with the applicable legal provisions regarding personal data protection, including the provisions of the GDPR, the implementation law as adopted, as well as the decisions which the Romanian supervisory authority may regularly issue in this respect, protecting each other from any breach of the personal data protection legislation.

11.3. Innoship is not responsible and shall not be liable for the accuracy and lawfulness of the processing of personal data imported in the Software by the Client. In this respect, the Client shall keep harmless and shall indemnify Innoship for any cost or damage deriving from or in connection with the personal data uploaded by the Client.

## 12. NOTIFICATIONS

12.1. Unless these Terms specifically requires otherwise, any necessary notice or other communication must be given in writing, in English or Romanian, and shall be sent to each Party at the available contact details (e.g., *the physical address or e-mail address of the Client associated with the user account*) or through the Software and will bear the signature of the notifying Party or its representatives.

12.2. The notice shall be:

1. delivered in person with handover signature by the receiving Party, including its representatives; or
2. by post or courier service with acknowledgement of receipt; or

3. by fax, electronic mail or through the Software, with possibility of confirmation of delivery.

12.3. The notice shall be deemed as served under the following circumstances:

1. when delivered in person, at the time when it is actually received;
2. when sent by post or public or private courier service, at the time of the receipt of delivery;
3. when sent by fax, electronic mail or through the Software, at the time of the transmission, if transmitted before the closing of a Business Day or otherwise, on the following Business Day, provided in each case that the required confirmation is sent (*e.g., receipt of delivery*).

12.4. In case of refusal of receipt, any notice shall be deemed as served on the day of the refusal.

### **13. CONFIDENTIALITY**

13.1. Each Party shall treat the Terms and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Terms or in connection with the other Party's activity or businesses as private and confidential and neither Party shall publish, use, exploit or disclose the same or any particulars thereof without the prior written consent of the other Party or as expressly permitted under these Terms.

13.2. The Confidential Information shall be used only for the purposes contemplated herein.

13.3. The confidentiality obligation is and remains in force for an unlimited period of time after the termination of these Terms, irrespective of the grounds for termination.

13.4. The Recipient shall disclose Confidential Information to its Representatives only to the extent that may be necessary for the performance of these Terms and only on a need-to-know basis and undertakes to take all necessary steps to ensure compliance by such Representatives with the obligations expressed herein, prior to the disclosure of the Confidential Information to the Representatives, including, without limitation, to incorporating such clauses into the agreements concluded with such third parties.

13.5. The Recipient shall be liable to the other Party for any failure by its Representatives to comply with such obligations as described herein, irrespective of whether the Representatives were aware or not of the existence of such obligations.

13.6. The confidentiality clause does not apply to information that:

1. is or becomes publicly available other than as a result of disclosure by the Parties or their Representatives; or
2. is or becomes available to the Party on a non-confidential basis from a third party that is not bound by any confidentiality obligation; or
3. was in the possession of the Recipient prior to disclosure or is independently developed by the Recipient without breach of these Terms, as can be shown by competent evidence.

13.7. Any Party may disclose any information that it is otherwise required to be kept confidential under these Terms, to the extent that the disclosure is absolutely necessary:

1. to its Representatives, in the conditions mentioned above under Articles 13.4 and 13.5;
2. to protect the disclosing Party's interest in any legal proceedings;
3. if required to be disclosed by a competent court of justice or by an administrative body. In this case, the Recipient shall, without delay, inform the other Party, in writing, of receipt of such order or coming into existence of such duty and shall enable such Party in a reasonable manner to seek protection against such order.

13.8. Upon termination of these Terms, each Party shall return to the other Party all the Confidential Information in its possession, custody or control. Each Party shall provide the other Party with a signed certification that it has complied with this obligation.

#### **14. FORCE MAJEURE**

14.1. Neither Party shall be responsible to the other for the non-performance or delay in performance (other than the payment of money) occasioned by any causes beyond its control including, without limitation, acts of civil or military authority, strikes, lockouts, embargoes, insurrections, acts of God or acts of terrorism.

14.2. The Party claiming the force majeure is obliged to notify the other Party in writing, within maximum 5 (five) Business Days from the date of commencement of the force majeure event and is obliged to take all necessary measures so as to limit its effects, unless the required measures are too burdensome. The Party claiming the force majeure shall also notify the other Party of its termination within 5 (five) Business Days from the date of termination.

14.3. If the Party claiming the force majeure does not fulfil its obligation to notify the other Party on the commencement of the force majeure within the term provided under Article 14.2, then the Party claiming the force majeure may not prevail itself of the exonerating effects of the force majeure case, regulated under this article.

14.4. If any such delay occurs, any applicable time period shall be extended for a period equal to the time lost, provided that the Party affected makes reasonable efforts to mitigate the consequences of such an event and gives the other Party prompt notice of any such delay.

14.5. In case the force majeure event lasts for more than three months, any Party may decide the termination of the Terms.

## **15. ASSIGNMENT AND CHANGE OF CONTROL**

15.1. These Terms and the rights granted hereunder, or any part thereof, may not be assigned or transferred by the Client without the prior written consent of Innoship.

15.2. Any Change of Control shall be deemed to be an assignment for the purpose of this provision.

## **16. SURVIVAL AND SEVERABILITY**

16.1. All obligations of the Parties which expressly or by their nature survive the termination or expiration of these Terms shall continue in full force and effect.

16.2. If any provision of these Terms is or becomes invalid, illegal or otherwise unenforceable, under the law of any jurisdiction, this shall not in any way impair the validity, legality and enforceability of the other provisions of the Terms, which shall remain in full force and effect.

16.3. If any provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, provided that this does not trigger a material adverse change to the initial commercial understanding of the Parties under the Terms.

16.4. Otherwise, the Parties shall make all efforts and negotiate in good faith so as to replace the invalid, illegal or unenforceable provision with a valid, legal and enforceable provision that achieves, to the greatest extent possible, the commercial effects of the original provision.

## **17. TIME OF THE ESSENCE**

17.1. The Parties agree and acknowledge that time is of the essence under these Terms, as regards to any dates, times and periods mentioned herein or set forth by the applicable legal provisions, with respect to all rights and obligations of the Parties set forth herein.

17.2. The Client will be considered as having been notified by law (*de jure*) for late fulfilment of its obligations by the sole expiry of the term established in these Terms or in the legal provisions, for the fulfilment of any obligations under these Terms or under the legal provisions.

## **18. NO SET-OFF**

18.1. The Client is not entitled to set off any of its claims with any of the claims of Innoship based on these Terms or with any other outstanding obligations of Innoship, without the prior written consent of Innoship.

## **19. HARDSHIP**

19.1. The Client hereby expressly undertakes to perform its obligations according to these Terms, irrespective of whether the performance of such obligations became more burdensome due either to the increase in the costs of performance of its own obligations or to the decrease in the value of Innoship's corresponding obligation and irrespective of whether the execution of the Terms becomes excessively burdensome due to an exceptional change of the circumstances existing at the date of their conclusion, and the Client hereby fully and irrevocably undertakes the risk regarding the change of circumstances in place at the conclusion of these Terms, and expressly and irrevocably waives to invoke the hardship theory as provided in art. 1271 paragraph 2 and paragraph 3 of the Romanian Civil Code, whose enforcement will be excluded in relation to it.

## **20. ENTIRE AGREEMENT**

20.1. These Terms, together with any documents referred to herein, constitute the sole, complete and exclusive agreement of the Parties relating to the subject matter hereof and supersede any previous or contemporaneous, oral or written, express or implied, arrangements, understandings, commitments, drafts, promises, agreements or any other pre-contractual representations between them that are not set out herein.

20.2. All addenda and annexes to these Terms shall constitute an integral part thereof.

20.3. No provision under Article 20 shall limit or exclude any liability or remedy for fraud.

20.4. The Parties did not enter into the Terms by relying on pre-contractual statements and representations.

20.5. Each Party confirms that, in entering into these Terms, it has not relied upon and shall have no remedies in respect of, any such representation as described under Article 20.1 above, warranty, collateral agreement or other assurance made by or on behalf of the other Party before the execution of these Terms, except for those expressly incorporated herein.

20.6. The Parties shall have no claim for innocent or negligent misrepresentation based upon any provisions set out herein or for any such pre-contractual misrepresentations.

## **21. APPLICABLE LAW AND JURISDICTION**

21.1. These Terms and any disputes or claims arising out of or in connection with its subject matter shall be governed by and construed in accordance with the laws of Romania, without giving effect to any choice or conflict of law provision or rule that would trigger the application of the laws of another jurisdiction.

21.2. Any dispute arising out of or relating to these Terms, including with respect to the conclusion, performance, breach or termination, shall be settled by the Parties by good faith negotiations. Should such a settlement not be possible, the dispute shall be settled by the Romanian courts of law.

## ANNEX 1 – SERVICE LEVEL AGREEMENT

### 1. AVAILABILITY OF THE SERVICE

- 1.1. Innoship guarantees a level of availability for the Software of 99.9%.
- 1.2. In case of an incident, the Client shall inform Innoship, in accordance with the provisions of these Terms, regarding the problem and the moment when it has occurred. While identifying and remedying such incident, the Client will provide Innoship, in a timely manner, with any information necessary in this respect.
- 1.3. Innoship shall perform normal system maintenance activities regarding any managed equipment/ system every 7 days. The maintenance activity will be carried out between 11:00 PM and 04:00 AM Client local time, without prior notice, except for the cases provided in art. 4 of the Terms.
- 1.4. The breach of the obligation provided above at art. 1.1 shall lead to a reduction of the invoice price corresponding to the month in which the availability level was not complied with, proportionally with the time for which the Software was not available.

### 2. EXCLUSIONS

- 2.1. The following scenarios will not be considered downtime for the purpose of this SLA and shall not attract any liability whatsoever of Innoship towards the Client:
  - a) Faults generated by third party communication services to which the Software is connected for communication purposes (e.g., SMS and emails, internet network);
  - b) Faults generated by third party data services which are used in connection to the Software for third party data import purposes (e.g., the application for orders of the Client) or data export (e.g., couriers' APIs);
  - c) Faults generated by cyber-attacks, in which case Innoship may shut down the entire system in order to protect the Client's valuable data;
  - d) Faults generated by the improper use of the Software by an employee of the Client (e.g., since the Software allows for data import and data manipulation, one of the users may, intentionally or by negligence, insert special code, for example by uploading a simple file, that would lead to improper actions being executed by the Software. In such scenario, the Software may become unavailable).



### 3. TECHNICAL SUPPORT

3.1. Technical support is ensured during Business Days, except the support for incidents of level 1 and 2, when Innoship shall offer support 24/7 on request. For the purpose of providing technical support, Innoship shall classify incidents with respect to their severity, in descending order, as follows:

DEFINITION	
Severity	Description
Priority 1 – Emergency	A problem which renders the used Software solution completely inoperable or which determines the cessation of a critical business process. The activity of the client is gravely impacted.
Priority 2 – Critical	<p>A critical business process is significantly affected or an uncritical business process is not available. The occurrence of a severity 2 incident implies that the Software works, but:</p> <ul style="list-style-type: none"> <li>• some components are deactivated;</li> <li>• it provides incorrect results with a minimum deviation of 5% in comparison with the estimated correct results;</li> <li>• performance is significantly affected, causing a significant impact on the business due to an issue in implementation/development.</li> </ul> <p>The Client may continue the use of the Software, but with a significant impact on its business.</p>
Priority 3 – Major	<p>A critical business process is facing certain service degradation or a non-critical business process of the supported solution is affected or unavailable. The occurrence of a severity 3 incident implied that the Software works, but</p> <ul style="list-style-type: none"> <li>• it provides incorrect results with a deviation between 1% and 5% in comparison with the estimated correct results;</li> <li>• performance is significantly affected, causing a limited impact on the business due to an issue in implementation/development.</li> </ul> <p>The supported solution may be used with a loss of services and/or performance, and with a limited impact on the Client’s business.</p>

Priority 4 – Minor	The supported solution has cosmetic or minor issues, without a significant impact on the Client's business.
Priority 5 – Information	General questions regarding features and functionalities of the supported solution.

3.2. The Response, Establishment and Resolution times for the occurred incidents are as follows:

Severity	Response time	Establishment time	Resolution time	Final remedy of the issue
Priority 1 - Emergency	0.5 hours	3 hours	5 Business Days	Next system version (next update)
Priority 2 - Critical	1 hour	6 hours	10 Business Days	Next system version (next update)
Priority 3 - Major	1 hour	12 hours	14 Business Days	Next system version (next update)
Priority 4 - Minor	2 hours	5 days	40 Business Days	Next system version (next update)
Priority 5 - Information	Through web interface – updates	15 days	Next scheduled tech update	Next system version (next update)

3.3. The work flow in case of an incident (Incident Status Workflow) is as follows:

From	To	Registered	Open	Waiting response from client	Waiting response from third party	Waiting on development team	Remedied	Closed
N/A		CLIENT						CLIENT
Registered			INNOSHIP					CLIENT
Open				INNOSHIP	CLIENT	INNOSHIP	INNOSHIP	CLIENT
Waiting response from client			CLIENT		CLIENT			CLIENT
Waiting response from third party			CLIENT					CLIENT
Waiting on development team			INNOSHIP	INNOSHIP			INNOSHIP	CLIENT
Remedied			CLIENT					CLIENT
Closed								
CLIENT				INNOSHIP: INNOSHIP IT maintenance team				

3.4. Description of the statuses is as follows:

3.4.1. **Registered:** when the problem is raised by the application administrators of the Client;

3.4.2. **Open:** when the issue is received by the maintenance team. The time between registration and opening the ticket represents the Response Time;

3.4.3. **Waiting response from client:** when relevant information has been requested from the Client for remedying the issue (*i.e.*, information necessary for identifying/replicating the issue, decisions of the Client regarding implementation of the solution);

3.4.4. **Waiting on a third party:** when resolution of the issue depends on external sources (*i.e.*, another provider, issue escalated to external provider);

3.4.5. **Waiting on the development team:** when the main issue is identified and the solution/ resolution is in progress;

3.4.6. **Remedied:** when the issues were resolved and awaits testing from the Client or confirmation for installation in the production environment. With the resolution of the incident, Innoship shall provide the details of the fault and the remedy actions;

3.4.7. **Closed:** when the issue was resolved and successfully tested by the Client.