



# GENERAL TERMS AND CONDITIONS

PROVISION OF INUVIKA SOFTWARE

Revised January 2021

## 1 DEFINITIONS

The terms defined below will have the meaning given in its definitions, as follows:

- 1.1 "Defect" means a Software failure or fault causing critical problems reported by the End User or Reseller that is actual, reproducible and identifiable by the support team at INUVIKA.
- 1.2 "End User" is the legal entity or individual that purchases to the INUVIKA MSA and includes a hosting provider that provides hosted solutions for their customers using Software.
- 1.3 "Effective Date" is the date upon which the MSA comes into effect as defined on the earlier of the date on the order or the installation of the INUVIKA MSA Key.
- 1.4 "GPL" means the GNU General Public License Version 2.0 Agreement attached as Schedule 1 (and any amendments or updates thereto, published on the INUVIKA website)
- 1.5 "INUVIKA Product" means the binary-code version of the Software, as applicable, including associated application programming interfaces, for which an Order has been received and which is installed by End User or End User's agent at End User's premises or at an End User-controlled space within a third party data center.
- 1.6 "MSA" means the Maintenance Service Agreement between End User and INUVIKA for the supply of an INUVIKA MSA Key, the General Terms and Conditions contained in this document and GPL and acknowledged electronically by the End User upon first use of the Software.
- 1.7 "MSA Key" means a code provided to an End User for access to INUVIKA Products.
- 1.8 "Order" refers to all the contractual documents pertaining to Software governing the relationship between the End User and Reseller (or between End User and INUVIKA where the sale has been direct to the End User) and which may contain additional services at the option of the End User
- 1.9 "Reseller" shall mean INUVIKA's independent reseller or dealer who, pursuant to an agreement with INUVIKA, promotes and distributes INUVIKA's existing products and services and who enters into Orders with the End Users on its own account,
- 1.10 "Software" means all or any part of the Inuvika OVD Enterprise software for professionals under GPL, identified in the Order and supplied to the End User hereunder.
- 1.11 "Support Service" means any support service provided by Reseller (or INUVIKA in the case of a direct sale) including servicing with respect to a Defect, error or defect.
- 1.12 "Support Service Plan" means a separate agreement to supply Support Service entered into with a Reseller or INUVIKA (in the case of a direct sale by INUVIKA of Software to the End User). In the case of Inuvika, the Support Service Plan is Inuvika's Support Policy found at <https://www.inuvika.com/inuvika-support-policy/>

## 2. PURPOSE

These General Terms and Conditions define the contractual agreement between INUVIKA and End User. Execution of an Order is not a contractual agreement with INUVIKA. There is no contractual agreement with INUVIKA except the MSA and it will be effective when the End User or Reseller (on behalf of the End User) receives the MSA Key. End User is bound by the MSA upon use of the MSA Key and any additional terms contained in the acknowledgement on the INUVIKA Product on first use.

End User acknowledges that INUVIKA has the right to reject any business opportunity and any Order.

Prior to placing the Order, the End User confirms that it has accurately evaluated its requirements and has made sure that the MSA is consistent with its requirements.

End User may purchase Support Service through the Reseller or INUVIKA (by way of a Support Service Plan).

### 3. APPLICATION AND ENFORCEABILITY OF THESE GENERAL TERMS AND CONDITIONS

- 3.1 By signing the Order and acknowledging the MSA, the End User expressly and fully agrees to be bound by these General Terms and Conditions in their entirety. Any modification of the Order by the End User must be expressly accepted by INUVIKA when submitted by the Reseller or when submitted directly to INUVIKA.
- 3.2 The End User expressly recognizes that any use by the End User of the MSA Key implies acceptance in their entirety and without exception of these General Terms and Conditions.
- 3.3 Unless they are formally accepted in writing by INUVIKA, no special terms or conditions may prevail over these General Terms and Conditions. For greater certainty, the Reseller has no authority to bind INUVIKA to any terms that are not specifically agreed to in writing with INUVIKA.
- 3.4 These General Terms and Conditions replace and supersede all prior documents and/or agreements entered into by the parties pertaining to Inuvika OVD Enterprise, except for the GNU General Public License Version GPL in Schedule 1 which End User is also bound by as a user of the Software.
- 3.5 Failure by INUVIKA to enforce all or part of the terms of an MSA cannot be construed as implying a waiver of its right to demand compliance with such terms in the future.

### 4. CONTRACTUAL DOCUMENTS

The full agreement between End User and INUVIKA pertaining to Inuvika OVD Enterprise consists of, by decreasing order of priority, of:

- (a) Any special terms and conditions accepted by INUVIKA
- (b) The MSA;
- (c) These General Terms and Conditions;
- (d) GPL.

In the event of a conflict above, the provisions of the document of a higher rank will prevail

### 5. ORDERS

- 5.1 All Orders are firm and final once INUVIKA receives the Order and supplies a MSA Key.
- 5.2 No Orders can be cancelled without the prior written authorization of INUVIKA. Any cancellation of an Order signed by the End User, the fulfillment of which has already commenced as defined in subsection 3.2, will result in the full MSA price becoming due and payable immediately to INUVIKA or Reseller, as the case may be, as compensation for termination. In addition, INUVIKA reserves the right to demand that the End User reimburse all expenses incurred.

### 6. SUPPORT

- 6.1 Support Services will be provided on releases of Software certified by INUVIKA, but only pursuant to a separate Support Service Plan.
- 6.2 All Support Service inquiries are to be directed through the Reseller. Unless there is a Support Service Agreement directly with INUVIKA, Reseller is responsible for answering all support inquiries. Support Service is not intended to provide the End User with assistance when installing and operating its information technology systems or to help it with information technology projects or process development.
- 6.3 Support Service Plan terms and levels available to End User are defined in the Order and/or Inuvika's Support Policy found at <https://www.inuvika.com/inuvika-support-policy/>

### 7. REPORTING SOFTWARE ANOMALIES

- 7.1 In the event of a Defect, the End User should report the issue to the Reseller (or INUVIKA in the case of a direct sale).
- 7.2 The End User should provide the Reseller or INUVIKA with any information required by INUVIKA that could help INUVIKA determine the cause of the Defect and reproduce it.

## 8. UPGRADE MAINTENANCE

- 8.1 Maintenance Service Agreement consists of informing the End User and providing it with any Software releases in order to improve the functionalities, correct any Defects detected since the last general release and, more generally, to update and upgrade the Software from time to time.
- 8.2 INUVIKA will email technical alerts to the End User or Reseller containing the most recent technical information about the INUVIKA Software.
- 8.3 INUVIKA will provide software maintenance to certified releases of the Software for 18 months after its release date (excluding beta versions/releases) and only then for End Users who have current unexpired MSAs. If the End User continues to use a previous release or a beta release and requires maintenance services regarding such releases, it will need to subscribe to them separately at additional costs. The End User shall review the up-to-date list of releases certified by INUVIKA on its website at [www.inuvika.com/support#history](http://www.inuvika.com/support#history) . **INUVIKA has no obligation whatsoever for INUVIKA Products installed or used beyond the expiry of the MSA.**

## 9. MAINTENANCE SERVICE EXCLUSION

- 9.1 INUVIKA will not provide MSA or Support Service Plans in the following cases and may not be held liable due to:
- a) failure by the End User to install any upgrades, new releases or patches provided by INUVIKA;
  - b) use of the Software in a way that does not comply with the user documentation available on INUVIKA's website at [www.INUVIKA.com](http://www.INUVIKA.com)
  - c) the End User using any software enhancements that were not developed by INUVIKA and not incorporated in a stable and certified release of the INUVIKA Software. Customer support and maintenance of any software enhancements made by INUVIKA, at the End User's request, must be the subject of a Service Agreement.
  - d) failure of any hardware used by the End User in conjunction with the INUVIKA Software
- 9.2 The following services are specifically excluded from the corrective and upgrade maintenance services provided by INUVIKA:
- a) recovery of End User's files in case of accidental destruction;
  - b) the operating work and specifically any and all kind of backups;
  - c) upgrading Software onsite at the End User's premises;
  - d) telecommunications expenses.

Therefore, INUVIKA strongly recommends that the End User backup its IT systems daily and weekly and to maintain and keep each backup separately. **The End User hereby acknowledges that it has been informed of and accepts this recommendation.**

## 10. FINANCIAL TERMS

- 10.1 The End User agrees to pay INUVIKA or Reseller, as indicated in the Order, the MSA fees specified. Every time an MSA fee payment becomes due, INUVIKA or Reseller will issue an invoice for the coming period. Unless otherwise agreed, the End User shall pay INUVIKA or Reseller invoices immediately upon invoicing. No discounts will be given for early payments or payments in cash.
- 10.2 In the event that INUVIKA carries out a diagnostic evaluation of a reported problem with the Software resulting from a report from an End User and the problem is due to misuse or errors made by the End User or to some cause not attributable to the INUVIKA Software or outside the scope of the Support Service Plan, as stipulated in Article 9 above, any service provided by INUVIKA will be charged based on INUVIKA's pricing terms applicable at the time the service is rendered.
- 10.3 The amount of the MSA fee for the MSA is specified in the Order.
- 10.4 End User is responsible for the payment of all value added, sales, customs, withholding or other excise taxes in addition to the MSA fee.

## 11. LATE PAYMENT AND PENALTIES

Any late payment, partial payment or non-payment of any INUVIKA or Reseller invoice by the End User on the due date will result in, (notwithstanding the application of the provisions of the Termination clause in Article 14):

- a) an automatic invoicing of a late payment penalty equal to interest at a rate of 20% per annum (or the maximum interest rate allowed by, whichever is less) applied to any amounts outstanding;
- b) the acceleration of all amounts outstanding to the end of the term making them immediately due and payable, regardless of the payment method and schedule that was stipulated.
- c) In addition and notwithstanding the foregoing provisions, in the event of a late payment, partial payment or non-payment of any INUVIKA or Reseller invoice by the End User on the due date, INUVIKA reserves the right to suspend, without prior notice, performance of the MSA Key and/or Support Service Plan until full payment of all outstanding amounts is made.

Any late payment shall give rise, in addition to the aforementioned late penalty fees, to the payment by the End User of any legal or collection fees expended by INUVIKA or Reseller to recover the outstanding amounts.

All amounts in this Section 11 will be due immediately upon invoicing.

## 12. INTELLECTUAL PROPERTY

### 12.1 License

The license granted by INUVIKA for the duration of the MSA gives the End User the right to use the Software in accordance with the terms of GPL and not for any other purpose whatsoever.

The right to use the Software is given for the Software release specified in the Order as well as for the successive Software releases released during the term of the MSA, including any additional features developed in connection with specific developments made at the End User's request.

The End User agrees to use this MSA only for its own purposes. It agrees not to furnish or make available the MSA Key to any third parties in any form whatsoever, directly or indirectly, in particular through any rental, assignment or loan, either without consideration or for valuable consideration.

At any time, up to three years after the relevant Software is delivered to the End User pursuant to a valid MSA, the End User may request a copy of a complete machine-readable copy of the source code for the particular Software. INUVIKA will charge a fee to cover the costs of providing the source code as permitted by GPL. The current costs are estimated to be US \$500.

### 12.2 Intellectual Property Rights to any Outcome of Service

All maintenance and upgrades that INUVIKA supplies to the End User are subject to the same terms and conditions of the MSA entered into between INUVIKA and the End User for the use of INUVIKA's Software.

### 12.3 White Label

The End User is permitted to white label the Software. However, in doing so, it must ensure the embedded words "Powered by Inuvika" (where "Inuvika" is the current work mark logo of INUVIKA) remains on the login page, without amendment, where it is embedded and must be clearly visible to the End User.

## 13. TERM

The MSA will be effective on the date the Order takes effect for the initial term specified in the Order. Unless otherwise provided and expressly accepted by INUVIKA, the date that the Order takes effect is the date that INUVIKA supplies the MSA Key.

The provision of Sections 20 and 23 hereof shall survive any termination or expiration of the MSA for any reason whatsoever.

#### 14. TERMINATION

INUVIKA reserves the right to terminate any MSA with immediate effect, without prior notice, if:

- (a) the End User has taken the initiative to modify the Software or specific developments made by INUVIKA;
- (b) the End User has misused the INUVIKA Software or specific developments;
- (c) the End User has made any change to of all or part of the server hardware, system software, the system software-database bundle or upgrade of versions of the latter that has not been expressly approved by INUVIKA in writing;
- (d) any changes are made to software that interfaces with or is incorporated in the INUVIKA Software or in software enhancements, that have not been approved by INUVIKA in writing;
- (e) the End User fails to pay a MSA fee for the MSA.

#### 15. NO WARRANTY

- A. INUVIKA warrants that for a period of ninety (90) days from the Effective Date, the Software will perform substantially in accordance with the Software documentation. As the INUVIKA Software is obtained pursuant to GPL, INUVIKA provides the Software “as is” and does not warrant that the operation of INUVIKA Software shall be uninterrupted or error free, that any errors or defects can be corrected, or that Software meets End User’s requirements. INUVIKA’s and its reseller partner’s entire liability and your exclusive remedy under this ninety (90) day Software warranty will be, at the sole option of INUVIKA and subject to applicable law, to replace the Software or to refund the purchase price paid (and for the MSA, providing relief from any subsequent annual payments due with respect to such MSA), and to terminate your right to use the SOFTWARE.
- B. THERE IS NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH THE END USER. INUVIKA will provide MSA and Support Services (including consulting services) in a professional and workmanlike manner, but INUVIKA cannot guarantee that every question or problem raised will be resolved or resolved in a certain amount of time. INUVIKA does not warrant in any form the results or achievements of the Software, MSA, Support Services, INUVIKA Product, technical support, consulting services or related deliverables. With respect to technical support, INUVIKA’s and its reseller’s entire liability and your exclusive remedy under this warranty is re-performance of the services.
- C. INUVIKA AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO THE PRODUCT, ANY EXPERIMENTAL FEATURES, MAINTENANCE AND ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCT AND MAINTENANCE ARE NOT DESIGNED, MANUFACTURED, DELIVERED OR INTENDED FOR ANY USE WHERE FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU ASSUME RESPONSIBILITY FOR THEIR SELECTION TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THEIR INSTALLATION, USE, AND RESULTS OBTAINED THEREFROM. INUVIKA shall have no liability for any claim for patent, copyright, license, or trade secret infringement based, in whole or in part, on any modification of any Software by Reseller, End User or any third party, or their respective employees or agents. In the event a preliminary or final judgment shall be obtained against Reseller’s or End User’s use or operation of any Software, or any part thereof, by reason of an alleged infringement of third party’s copyright by any INUVIKA binary code, INUVIKA may replace, at its election, in whole or in part, such binary code with a substantially compatible and functionally equivalent program or modify such binary code to avoid the infringement. This shall be End User’s sole remedy in the event of such a claim.

**No Implied Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, INUVIKA MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES FOR INUVIKA PRODUCT, WRITTEN OR ORAL. TO THE**

**MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES IN RELATION TO INUVIKA PRODUCT, SOFTWARE OR SERVICES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES ARISING BY STATUTE, COURSE OF DEALINGS OR USAGE OF TRADE.**

16. LIMITATION OF LIABILITY

- A. **Limitation on Direct Damages.** INUVIKA'S TOTAL LIABILITY AND EXCLUSIVE REMEDY FOR ANY CLAIM, LIABILITY, DAMAGE, PENALTY, LOSS OR EXPENSE OF ANY TYPE WHATSOEVER, ARISING OUT OF INUVIKA PRODUCTS PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY INUVIKA'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE AMOUNTS PAID BY RESELLER TO INUVIKA IN RESPECT OF THE END USER (OR THE AMOUNT PAID DIRECTLY BY END USER TO INUVIKA) DURING THE LAST SIX (6) MONTHS UNDER THE MSA PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.
- B. **No Indirect Damages.** INUVIKA SHALL HAVE NO LIABILITY TO END USER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, SUCH AS FINANCIAL OR COMMERCIAL PREJUDICE, LOSS OF BUSINESS OPPORTUNITIES, OF CLIENTELE OR OF SAVINGS, ANY COMMERCIAL DISTURBANCE WHATSOEVER, ANY INCREASE OF COSTS OR OTHER GENERAL EXPENSES, LOSS OF PROFIT OR LOSS OF BRAND IMAGE THAT MAY RESULT FROM THE AGREEMENT OR THE USE, THE IMPROPER USE OR THE LACK OF USE OF ANY OF INUVIKA PRODUCT, EVEN IF INUVIKA WAS ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL INUVIKA'S OR ITS RESELLER'S LIABILITY TO END USER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT SET OUT IN SUBSECTION 16A. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. INUVIKA WILL NOT BE LIABLE FOR ANY THIRD-PARTY INTRUSIONS INTO THE END USER'S INFORMATION SYSTEM, EVEN IF THESE INTRUSIONS ARE DUE TO A FAULT IN THE INUVIKA PRODUCT. INUVIKA WILL NOT BE LIABLE FOR ANY ACCESS DIFFICULTIES OR IMPOSSIBILITY OF ACCESS TO INFORMATION OR DATA DUE TO PROBLEMS WITH TELECOMMUNICATION NETWORKS OR OTHER TECHNICAL DIFFICULTIES.
- C. **Reseller Relationship** - The relationship between INUVIKA and Reseller is that of independent contractors, and nothing shall be construed to make Reseller a partner, joint-venturer, agent or co-owner of INUVIKA, nor shall it allow Reseller to create or assume any obligation or make any representation on behalf of INUVIKA for any purpose whatsoever.
- D. **Regular Back-ups.** During the Term of this MSA and as part of its obligation to mitigate damages, End User will take reasonable data back-up measures. In particular, End Users shall conduct a daily back-up process and back-up the relevant data before any remedial, upgrade or other works on End User's production systems. To the extent INUVIKA's liability for loss of data is not anyway excluded under this Agreement, INUVIKA shall, in case of data losses only, be liable for the typical effort to recover the data which would have accrued if End User had appropriately backed up its data.
- E. **Limitation Period.** All claims for damages based on defects of INUVIKA Product shall be time-barred 12 months after delivery (or acceptance, if applicable), except if the parties have agreed on a shorter warranty period. Unless otherwise required by applicable law, the limitation period for all other claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period in which case such shorter period shall apply.

17. DATA PROTECTION

- 17.1 INUVIKA hereby informs the End User that the creation of databases containing personal data and the collection and processing of personal data is regulated by law. If End User's use of INUVIKA Products is based on personal data collected and transmitted by the End User, INUVIKA, acting as the End User's subcontractor may not be held liable for any matter related to the compliance with the protection of personal data.
- 17.2 The End User is aware of the regulations on the protection of personal data and warrants to INUVIKA that End User complies with the provisions of all data-protection laws.

- 17.3 The End User agrees to make all filings, apply for all authorizations and give all notifications required based on the kind of data and/or files used.
- 17.4 End User agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by or in breach of any export laws of the country in which the End User is located (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, End User represents and warrants that End User is not a citizen of, or located within, an embargoed or otherwise restricted nation and that End User is not otherwise prohibited under the Export Laws from receiving the Software. All rights to install and use the Software are granted on condition that such rights are forfeited if End User fails to comply with the terms of this Agreement.
- 17.5 The End User shall be solely liable for all declarations and legal and/or administrative authorizations required to use the Software and the MSA and Support Service Plans in the country in which they will be used by the End User.

## 18. PROOF

- 18.1 The parties hereby accept that faxes and emails that they may exchange among themselves will have probative value, provided that the person who sent them can be dully identified, and thus they agree not to demand any confirmation by letter, unless otherwise provided for in the Order, and these General Terms and Conditions.
- 18.2 Electronic records and files maintained on INUVIKA's IT system, under reasonable and reliable security conditions, are considered proof of a relationship and communications between the parties. Except in case of a gross error, INUVIKA may assert, as proof of any action, allegation or omission, any electronic data or information in an electronic format or created, received or maintained directly or indirectly by INUVIKA, in particular on its IT systems. Such data and information will therefore be admissible, valid and binding between the parties in the same manner, on the same terms and will have the same probative value as any written document that is created, received or maintained, unless it can be shown that the device that INUVIKA used to record and store them was somehow defective.

## 19. INSURANCE

The End User represent that it has valid insurance to cover any consequences of any damage that might occur with any failure in the End User's IT systems with a reputable insurance company and they undertake to maintain such insurance for the full duration of the MSA. End User must utilize any insurance claim before making any claim against Reseller or End User.

## 20. NON-SOLICITATION OF EMPLOYEES

Unless otherwise agreed, the End User agrees not to solicit or cause to work in any capacity whatsoever, directly or indirectly, any INUVIKA employee that is involved in the fulfillment of an Order. This obligation will remain valid during the fulfillment of an Order and for one full year after its completion.

Any End User that fails to comply with this obligation may face the requirement to pay immediately to INUVIKA, a penalty equal to twenty-four (24) months of the basic gross annual salary of the person in question.

## 21. LEGAL AND ADMINISTRATIVE AUTHORIZATIONS

- 21.1 To the extent that it may be necessary, the End User will carry out all regulatory or legal requirements and pay all costs associated with such matters that may be necessary for the fulfillment of an Order.
- 21.2 Under no circumstances may the fact that any regulatory or legal requirements that are not carried out or accepted, be considered a case of force majeure and the End User alone will accept all consequences stemming there from.
- 21.3 The aforementioned provision covers, but is not limited to:



- (a) prior authorizations related to telecommunications networks, telephone service, usage of frequencies, usage of certain encryption services and applications and special authorizations;
- (b) prior filings such as filings with any data protection authority;
- (c) legally required information such as the information required under any privacy legislation.

#### 21.4. Reference to Corporate Names and Trademarks

The End User hereby authorizes INUVIKA to use and reference its corporate names and trademarks and to give a general description of the services and the Software that INUVIKA provides to the End User in its presentations, customer databases, case studies and in other informational or promotional materials.

#### 22. FORCE MAJEURE

- 22.1 Initially, cases of force majeure or acts of God will suspend the fulfillment of Orders. The party that is the victim of a case of force majeure or an act of God must report it immediately to the other party. Force majeure may not be used to delay any payment owing to Reseller or INUVIKA.
- 22.2 If the case of force majeure or the act of God last for more than three (3) months, the Order may be terminated as a matter of right and neither party will be required to pay compensation to the other nor provide any refund.
- 22.3 In addition to those typically recognized in the courts, the following will be considered cases of force majeure or acts of God in the event that they cause a disruption in the ability of the End User to use the Software: total or partial strikes inside or outside the company, lockouts, riots, insurrection, intemperate weather, epidemics, blockage of means transportation or supplies for any reason whatsoever, earthquakes, fires, storms, flooding, water damage, governmental or legal restrictions, legal or regulatory modifications of forms of commercialization, total or partial blockage of telecommunications or communications systems, including networks, and any other case beyond the control of the parties and preventing the normal fulfillment of an Order.

#### 23. CONFIDENTIALITY

- 23.1 Each of the parties pledges not to use for its benefit or for the benefit of any third party and not to disclose to any unauthorized third parties any confidential information that the other party provided to it in the performance of the agreement.
- 23.2 It is agreed that confidential information (the "Confidential Information") shall refer to all information communicated by one of the parties in written or digital form or on any form including, without limitation, and all of the commercial secrets and/or methods belonging to one of the parties and also all programs, data and/or files that the End User may provide to INUVIKA.
- 23.3 Accordingly, the parties agree and take personal responsibility for making sure that their employees protect such confidential information and not to disclose them or give third parties access to them without the prior written authorization of the other party, unless such disclosure is required pursuant to an injunction from a court, a government agency or to assert its rights in connection with an Order.
- 23.4 The parties commit to this confidentiality obligation for the entire duration of the MSA and for one (1) year from the end of the Order.
- 23.5 Each Party undertakes, represents and warrants to the other party, that its personnel and any eventual service-provider, who have access, in any way whatsoever, to Confidential Information, will treat such information as Confidential Information and will not disclose it or make it available to third parties without the other party prior written consent, unless required by a court of law, an administration or to exercise rights arising from the Order.
- 23.6 The nondisclosure obligation does not apply to:
  - (a) information that the receiving party had knowledge of before it was disclosed;

- (b) information obtained from third parties by legitimate means and with no nondisclosure obligation;
- (c) information created separately and independently by the receiving party;
- (d) information made public by the party that disclosed them.
- (e) information required to be disclosed by a court of law.

#### 24. TRANSFER

The End User expressly agrees not to transfer and/or assign all or part of the MSA (including but not limited to, through merger, acquisition, amalgamation or transfer of assets), with or without consideration, without INUVIKA's prior authorization.

INUVIKA reserves the right to subcontract or to use a third party to perform all or part of its obligations in connection with Orders.

#### 25. SEVERABILITY

If any provision of these General Terms and Conditions is held to be invalid or found to be by any law, regulation or as a result of a final decision of a court of law with jurisdiction, the other provisions will remain in full force and effect.

#### 26. GOVERNING LAW

These General Terms and Conditions are governed by the laws of the Province of Ontario, Canada.

#### 27. CONSENT TO JURISDICTION

IN THE EVENT OF A DISPUTE, IF NO AMICABLE SETTLEMENT CAN BE REACHED WITHIN 120 DAYS FROM THE DATE ON WHICH SUCH DISPUTE HAS ARISEN, SPECIFIC JURISDICTION IS GRANTED TO THE COURTS OF THE PROVINCE OF ONTARIO SITTING IN THE CITY OF TORONTO, NOTWITHSTANDING PLURALITY OF DEFENDERS, EVEN WITH RESPECT TO EMERGENCY PROCEEDINGS OR PROTECTIVE MEASURES, BY INJUNCTION OR BY REQUEST.

## SCHEDULE 1

### GNU GENERAL PUBLIC LICENSE

Version 2, June 1991

Copyright (C) 1989, 1991 Free Software Foundation, Inc.

51 Franklin Street, Fifth Floor, Boston, MA 02110-1301, USA

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#### Preamble

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When we speak of free software, we are referring to freedom, not price. Our General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software (and charge for this service if you wish), that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things.

To protect your rights, we need to make restrictions that forbid anyone to deny you these rights or to ask you to surrender the rights. These restrictions translate to certain responsibilities for you if you distribute copies of the software, or if you modify it.

For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights.

We protect your rights with two steps: (1) copyright the software, and (2) offer you this license which gives you legal permission to copy, distribute and/or modify the software.

Also, for each author's protection and ours, we want to make certain that everyone understands that there is no warranty for this free software. If the software is modified by someone else and passed on, we want its recipients to know that what they have is not the original, so that any problems introduced by others will not reflect on the original authors' reputations.

Finally, any free program is threatened constantly by software patents. We wish to avoid the danger that redistributors of a free program will individually obtain patent licenses, in effect making the program proprietary. To prevent this, we have made it clear that any patent must be licensed for everyone's free use or not licensed at all.

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