

Terms and Conditions of Service

The Platforms are provided by **C9 Pty Ltd** (ACN 009 554 410) as trustee for the C9 Unit Trust (ABN 93 481 830 697) of Level 19, 1 Eagle Street, Brisbane, QLD 4000 (**C9**). You are the person who has agreed to subscribe for use of and access to C9's Platforms in accordance with these terms and conditions (**Customer**).

Please read the terms and conditions of this Agreement carefully. These terms and conditions (including our website terms of use and privacy policy) define the terms and conditions under which you are allowed to access and use C9's Platforms. Relevant definitions are contained at clause 26.

This Agreement was last updated on 27 September 2017.

1. Acceptance of terms and conditions

- (a) Permission to use and access the Software is conditional upon the Customer agreeing to the terms and conditions set out in this Agreement. The Software is only offered to the Customer on condition that the Customer has read and accepts all the terms of this Agreement and wishes to have access to and use of the Software.
- (b) Acceptance will bind the Customer and all of the Customer's officers, employees and agents to the terms of this Agreement. By accessing and using the Software, or clicking "I Accept" at the end of these terms and conditions, the Customer will be deemed to have accepted the terms and conditions of this Agreement. If the Customer does not wish to accept the terms and conditions of this Agreement, the Customer must not click "I Accept" and the Customer must not use or access the Software.
- (c) The person who has agreed to be bound by the terms and conditions of this Agreement by indicating acceptance warrants that he/she has the authority of and was authorised by the Customer to agree to acceptance on behalf of the Customer and agrees that acceptance is binding on the Customer. If for any reason the terms and conditions of this Agreement are not binding upon the Customer in the Customer's jurisdiction, then the Customer is prohibited from using the Software in any manner whatsoever and must promptly cease use of, and accessing, the Software.

2. Platforms and Software

2.1 Access to Software Services

- (a) Where the Customer is an End User, C9 grants to the Customer for the Term access to use and communicate each part of the Software relating to it solely for Customer's internal business purposes and to make necessary copies of the Customer's data and Documentation for both backup and security purposes.
- (b) Where the Customer is a Whitelabel Customer, C9 grants to the Customer for the Term:
 - (i) access to use and communicate each part of the Software and the Documentation relating to it solely for Customer's internal business purposes and to make necessary copies of the Customer's data and Documentation for both backup and security purposes; and
 - (ii) a non-exclusive licence to:

- (A) customise the Software, within the functionality permitted by the Software and in accordance with this Agreement, to the extent necessary to create the Whitelabel Version;
- (B) reproduce the Documentation to the extent necessary to complete user documentation relating to the Whitelabel Version; and
- (C) grant access to Whitelabel Users to the Whitelabel Version (including any relevant Documentation).

2.2 Customer Account

- (a) When the Customer accesses any of the Platforms, the Customer accepts responsibility for any action done by any person using the Customer's registered name, account or password for the relevant Platform.
- (b) The Customer must:
 - (i) take all necessary steps to ensure that the password for the Customer's account is kept confidential and secure;
 - (ii) not share with a third party any login credentials for any of the Platforms; and
 - (iii) immediately inform C9 if the Customer has any reason to believe that the password has become known to anyone else, or if the password is being, or is likely to be, used in an unauthorised manner.
- (c) The Customer warrants that the Customer has provided accurate, up-to-date, and complete information on the Platforms, including valid credit card information.
- (d) The Customer acknowledges and agrees that C9 is not responsible for any error in the Platforms made as a result of such information being inaccurate.
- (e) The Customer must promptly notify C9 of any changes to its information. If the Customer fails to do so, the parties agree this will be a material breach of the Agreement and C9 may immediately terminate this Agreement.

2.3 General restrictions on use

The Customer agrees:

- (a) to use the Platforms solely as permitted by this Agreement;
- (b) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code except to the extent expressly permitted by applicable law or treaty;
- (c) subject to clause 2.1, not to sell, rent, lease, licence, sub-licence, display, time share or otherwise transfer the Software to, or permit the use of the Software by, any third party, except to the extent specified in this Agreement;
- (d) not to:
 - (i) redistribute or grant access to the Software, in whole or part, including but not limited to, extensions, components or dynamic link libraries other than as expressly permitted by this Agreement;

- (ii) reproduce or modify the Software other than as expressly permitted by this Agreement; or
 - (iii) use the Software to transfer or exchange any material where the transfer or exchange is prohibited by copyright or any other law;
- (e) not to access or use the Platforms to:
- (i) spam, spoof, or phish email;
 - (ii) transmit junk email or offensive or defamatory material;
 - (iii) Post, upload or distribute any content that contains vulgar, obscene, indecent or unlawful material;
 - (iv) stalk or make threats of physical harm;
 - (v) store or transmit any software viruses, worms, time bombs, Trojan horses, or any other computer code, files, denial-of-service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
 - (vi) violate any law or regulation;
 - (vii) publish, Post, upload, or otherwise distribute any software, music, videos, or other material protected by intellectual property laws (or by rights of privacy or publicity) unless the Customer has all necessary rights and consents to do so;
 - (viii) infringe or misappropriate the rights of any third party;
 - (ix) impact the normal operation, privacy, integrity or security of a third party's property, including a third party's accounts, domain names, URLs, websites, networks, systems, facilities, equipment, data, other information, or business operations;
 - (x) falsifies or deletes any author attributions, legal or proprietary designations, labels of the origin or source of software, or other material contained in a file that is uploaded;
 - (xi) probe, scan, or test the vulnerability of the Platforms or breach any security or authentication measures used by the Platforms; or
 - (xii) benchmark the availability, performance, or functionality of the Platforms for competitive purposes; or
 - (xiii) manually or systematically harvest information and data contained within the Platforms other than Customer Data or otherwise authorised in relation to the use of the Platforms;
- (f) not to remove, obliterate, destroy, modify or omit any copyright notice or other legend appearing in or on the Software and shall fully reproduce such notices or legends on any copy of the Software, or portion thereof;
- (g) not to use the Platforms in a manner that violates the usage standards or rules of an entity affected by the Customer's use, including without limitation any internet service provider, email service provider, or news or user group (including, but not limited to, circumventing or exceeding equipment use rights and restrictions and/or location and path identification detail);

- (h) subject to this Agreement, to preserve the confidential nature of the proprietary and trade secret information by retaining and using the Software in confidence, and to use all precautions reasonably necessary to prevent the unauthorised use, access, intentional misuse, copying, publication or dissemination of the Software and C9's confidential information learned from the Customer's use of the Software; and
- (i) to ensure its employees, consultants, agents and contractors to whom the Software is made available by the Customer also comply with this clause 2.2.

2.4 Additional Whitelabel Customer restrictions on use

- (a) C9 licences the Whitelabel Customer to use the Software solely for the purposes of this Agreement and in the manner described in this Agreement. Without limiting the foregoing, the Whitelabel Customer must not use or enjoy the Software other than for the purpose of:
 - (i) developing the Whitelabel Version to the extent authorised by this Agreement; and
 - (ii) granting access to the Whitelabel Version to Whitelabel Users in the manner authorised by this Agreement.
- (b) Any customisation of the Whitelabel Version by the Customer must not include the addition of new functionality or the incorporation of new software.
- (c) The Whitelabel Customer must not grant access to the Whitelabel Version to any Whitelabel User unless that Whitelabel User has entered into a Sub-Licence.
- (d) The Whitelabel Customer must ensure that the terms of any Sub-Licence:
 - (i) notify the Whitelabel User that C9 is the head licensor of the Software;
 - (ii) are fully compliant with all relevant laws; and
 - (iii) are not inconsistent with C9's rights (including applied as if the Whitelabel User was the Customer) or the Whitelabel Customer's obligations under this Agreement.

2.5 Unacceptable use

- (a) The Customer agrees not to make or permit any use of the Software in a way which is unacceptable. Use is unacceptable if:
 - (i) it involves anything which is false, defamatory, harassing or obscene;
 - (ii) it involves unsolicited electronic messages;
 - (iii) it would involve the contravention of any person's rights (including intellectual property rights);
 - (iv) it may offend any laws; or
 - (v) it may otherwise be regarded by C9, on reasonable grounds, to be unacceptable.
- (b) C9 may from time to time notify the Customer of the circumstances which C9 regards as unacceptable.
- (c) The Customer agrees that C9 may immediately suspend all or any part of the Software Services, and remove or disable access to anything that contravenes those restrictions or is otherwise in breach of this Agreement.

2.6 Right to monitor

C9 has the right to monitor the Customer's operation of the Software at reasonable times as mutually agreed by Customer or upon reasonable written notice to Customer, provided that such activities shall not unreasonably interfere with the Customer's business operation.

2.7 Changes to Platforms

C9 may change the Platforms at any time without prior notice to the Customer. If any modification, discontinuation, or deprecation of any of the Platforms causes a material, adverse impact to the Customer's operations, C9 may, at its absolute discretion, attempt to repair, correct, or provide a workaround for the Customer.

2.8 Third Party Software

- (a) The Customer acknowledges that Third Party Software may be necessary or appropriate for access to or use with the Software. The Customer agrees that its right to make any use of such facilities is governed by the terms of the relevant third party licence/services agreement and not by this Agreement.
- (b) If the Customer uses any Third Party Software to interact with the Software then the Customer must:
 - (i) obtain C9's prior written consent to installation of that Third Party Software;
 - (ii) negotiate with the proprietors or licensors of any Third Party Software for any licences in respect of such software;
 - (iii) arrange for installation of any Third Party Software, and any additional hardware required for the operation of the Third Party Software by a suitably qualified and skilled person at the Customer's cost;
 - (iv) be solely responsible for maintenance of any Third Party Software and any additional hardware required for the operation of the Third Party Software; and
 - (v) accept that if any Third Party Software impacts on the performance of the Software for the Customer, it is the Customer's responsibility at its cost to resolve the problem.

2.9 Third party services

- (a) C9 shall bear no liability or responsibility for services provided by third parties to the Customer (including, but not limited to, support, maintenance and telecommunications) whether or not those services are provided on behalf of, or procured by, C9 and whether in respect of Software or Third Party Software.
- (b) Should the Customer wish to obtain such services from a provider other than one procured by C9, the Customer may do so with the prior written consent of C9.
- (c) Without prejudice to its general discretion to give or withhold its consent, C9 may withhold its consent where provision of services by the requested provider could, in C9's sole opinion, impact detrimentally on C9 (including any impact on contractual commitments C9 may have), on the Software (including Software functionality and/or performance), or on any other Customer.

3. Term

3.1 Commencement and Termination

This Agreement shall commence on the Commencement Date and unless terminated in accordance with its terms shall continue for the Initial Term.

3.2 Renewal of Term

- (a) The Customer agrees that the Term of this Agreement will continue beyond the Initial Term or the current Renewal Term and automatically renew for another Renewal Term until such time as either Party gives the other written notice of its intention to terminate the Agreement in accordance with clause 18.
- (b) C9 will send the Customer a reminder email prior to the renewal of the Agreement for a new Renewal Term, which will contain the following information:
 - (i) the date of expiry of the Initial Term or current Renewal Term (as applicable);
 - (ii) notification of any price changes in accordance with clause 5(c);
 - (iii) reminder that the Customer will be billed by the Customer's chosen payment method;
 - (iv) instructions on how the Customer may cancel the Software Services, which the Customer must do before the renewal date to avoid being billed for the new Renewal Term.
- (c) Once the Term has automatically renewed, the Customer will be charged the applicable Service Fees in accordance with clause 4.

4. Payment of Service Fees

4.1 Obligation to pay Service Fees

- (a) In consideration for the use of the Software provided by C9 to the Customer, the Customer must make payments to C9 in accordance with this clause 4 and as otherwise referred to in this Agreement.
- (b) The Customer must pay the Service Fees using the payment method notified to C9.

4.2 Monthly Charge

Where the Customer has specified that the Customer will pay the Monthly Charge for the Software, for each month or part month during the Term the Customer must pay to C9 the Monthly Charge. The Monthly Charge shall be due and payable on the first day of each month or as otherwise specified in a tax invoice issued by C9 to the Customer.

4.3 Yearly Charge

Where the Customer has specified that the Customer will pay the Yearly Charge, for each year or part year during the Term the Customer must pay to C9 the Yearly Charge. The Yearly Charge shall be due and payable on first day of the Initial Term or the anniversary of the Commencement Date each year (as relevant) or as otherwise specified in a tax invoice issued by C9 to the Customer.

5. Variation of Agreement

- (a) C9 may otherwise, at its discretion, vary this Agreement, including the provision of the Platforms and amount of the Service Fees, at any time by 30 days' prior written notice to the Customer.
- (b) C9 may notify the Customer under clause 5(a) by Posting the details of the variation to the Platforms.
- (c) If C9 issues a notice regarding an adjustment to the Service Fees under clause 5(a), the Customer may terminate this Agreement within 30 days' of receipt of such notice by providing written notice to C9.
- (d) If the Customer does not terminate this Agreement in accordance with clause 5(c), the Customer is deemed to accept the updated Agreement as varied, and must continue to perform its obligations in accordance with the Agreement as varied.

6. Data

6.1 Customer Data

- (a) Subject to clause 6.2, C9 agrees that Customer Data is the Customer's Confidential Information.
- (b) C9 shall, on reasonable notice, make Customer Data and related data, documentation or records maintained on behalf of the Customer available for inspection by the Customer or the Customer's auditors.
- (c) The Customer agrees that:
 - (i) it has sole responsibility for the accuracy, quality, integrity, legal compliance, reliability, appropriateness and rights ownership in all Customer Data;
 - (ii) there are limitations to the Software's ability to assist in the Customer's business; and
 - (iii) that the Software:
 - (A) does not detect faulty or aberrant input data;
 - (B) does not take into account all of the matters that should be considered in decision making regarding matters of relevance to the Customer's business; and
 - (C) should not be used as a substitute for the Customer's independent and appropriately qualified decisions regarding matters of relevance to the Customer's business.
- (d) The Customer warrants that it will not make or permit any access to or use of the Software unless it has in place appropriate strategies, in addition to (and not reliant on) its use of the Software to manage all risks attendance on its business.

6.2 Licence to Customer Data

- (a) The Customer is owner of, and retains all right, title, and interest in, any Customer Data.

- (b) During the Term, the Customer grants to C9 a non-exclusive, royalty-free license to edit, copy, store, publish, distribute, translate, display and otherwise use Customer Data for any purpose, including commercial purposes.
- (c) The Customer represents and warrants it has the necessary rights, and is authorised, to grant the licence in clause 6.2(a).

6.3 Customer Data indemnity

The Customer indemnifies C9, its Related Bodies Corporate, and each of their respective officers, employees and agents (**those indemnified**) against all costs and liability incurred by those indemnified as a result of C9's possession, processing, use or other handling of any Customer Data, documentation or records, except to the extent that such costs and liability arise as a result of C9's breach of the Agreement.

6.4 Removal of Customer Data

C9 may remove or delete any portions of Customer Data if there is reason to believe that uploading Customer Data to, or using it with, any of the Platforms materially violates this Agreement. If reasonable under these circumstances, C9 will notify the Customer before removing Customer Data.

6.5 Bandwidth limit and data storage

- (a) The Customer must not exceed its agreed bandwidth limit and storage requirements for the Software.
- (b) If the Customer exceeds its agreed bandwidth limit and storage requirements, C9 may, in its absolute discretion:
 - (i) charge additional fees for the additional usage the Customer has used, such additional fees to be paid within 14 days of the invoice date; or
 - (ii) limit the Customer's access to and use of the Software Services without notice to the Customer.
- (c) C9 is not liable to the Customer for the deletion or failure to store or deliver email or other messages on any of the Software.
- (d) C9 may, from time to time:
 - (i) set a limit on the number of messages the Customer may send, store, or receive through the Software;
 - (ii) delete messages in excess of that limit.
- (e) C9 will use reasonable commercial endeavours to provide the Customer notice of any change to such limit, except in an emergency.
- (f) C9 gives no warranty that Customer Data will be saved or backed up in any particular circumstances.

6.6 Feedback

C9 may freely use any feedback, suggestions, or requests for improvement in respect of the Platforms that the Customer provides to C9.

7. Intellectual property

7.1 General

- (a) The Customer acknowledges that all Intellectual Property including copyright and other industrial and intellectual property rights of whatever nature that subsist or may subsist in the Platforms including, without limitation, patents, trademarks, copyrights and trade secrets, are and shall remain the absolute property of C9.
- (b) The Customer must not do or permit anything to be done in connection with the names C9, InBoundio or any other trade mark, tradename or logo which C9 owns or is entitled to use which would:
 - (i) suggest the Customer as the owner of such names, trademarks, trade names or logos;
 - (ii) provide any representation or promotion of or in connection with the Software or any other product made available by C9, without C9's prior written consent as to the form of such representation or promotion; or
 - (iii) damage those names, trademarks, trade names or logos or bring them or C9 into disrepute.
- (c) Subject to the provisions of clause 7, C9 shall indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use or a Whitelabel User's use of the Software constitutes an infringement of a third party's intellectual property rights in Australia.

7.2 Whitelabel Version

- (a) Subject to clause 7.1, the Whitelabel Customer may brand the Whitelabel Version under Customer's name and may be accessible to the public under a URL designated by the Customer.
- (b) The name and logo(s) of C9 may only appear on the Whitelabel Version in accordance with clause 7.1.
- (c) All rights in modifications to the Software, or works derived from the Software, whether or not developed for the purpose of creating the Whitelabel Version and whether or not subsequently incorporated into the Whitelabel Version, shall vest upon creation in C9.
- (d) The Whitelabel Customer warrants that the Whitelabel Version does not infringe the Intellectual Property of any person. The Whitelabel Customer fully indemnifies C9, its Related Bodies Corporate, and each of their respective officers, employees and agents (**those indemnified**) against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against any of those indemnified alleging that the Whitelabel Version infringes any such Intellectual Property.
- (e) C9 must notify the Whitelabel Customer as soon as practicable of any infringement, suspected infringement or alleged infringement by the Whitelabel Version of the Intellectual Property of any person.
- (f) Without prejudice to C9's right to defend a claim alleging such infringement, the Whitelabel Customer shall if requested by C9 (but at the Whitelabel Customer's expense) conduct the defence of a claim by a third party which alleges infringement by the Whitelabel Version of

Intellectual Property. The Whitelabel Customer shall observe C9's directions relating in any way to that defence or to negotiations for settlement of the claim.

- (g) C9 may, if requested by the Whitelabel Customer but at the Whitelabel Customer's expense, provide the Whitelabel Customer with reasonable assistance in conducting the defence of a claim pursuant to clause 7.2(f). The Whitelabel Customer shall reimburse C9 for all verified expenses incurred pursuant to this clause 7.2(g) within 14 days of receipt of C9's written demand.
- (h) Without limiting the generality of clause 7.2, if it is determined by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of Intellectual Property has occurred, the Whitelabel Customer shall at its sole expense:
 - (i) modify the Whitelabel Version in order to avoid continuing infringement;
 - (ii) procure the right to continue the use or possession of the infringing software; or
 - (iii) if the solutions in either of the preceding paragraphs cannot be achieved:
 - (A) cease marketing and distribution of the Whitelabel Version;
 - (B) terminate any Sub-Licences; and
 - (C) notwithstanding and in addition to any other obligation arising under this Agreement or at law, indemnify and hold harmless C9, its Related Bodies Corporate, and each of their respective officers, employees and agents in respect of any liability arising to a Whitelabel User in respect of the termination of a Sub-Licence or the cancellation of an order.

8. Confidential Information

8.1 Definition

Confidential Information of a party (**Disclosing Party**) means all information:

- (a) treated by the Disclosing Party as confidential; and
- (b) disclosed by the Disclosing Party to the other party or of which the other party becomes aware, whether before or after the Commencement Date,

but does not include information the other party creates (whether alone or jointly with any third person) independently of the Disclosing Party, or information that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted disclosees).

8.2 Use and disclosure

Each party:

- (a) may use Confidential Information of a Disclosing Party only for the purposes of this Agreement in accordance with the terms and conditions of this Agreement; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except:
 - (i) in respect of Customer Data, as specified in clause 6;
 - (ii) for disclosures permitted under clause 8.3; and

- (iii) to the extent (if any) the party receiving Confidential Information (**Recipient**) is required by law to disclose any Confidential Information.

8.3 Permitted disclosure

A Recipient may disclose Confidential Information of a Disclosing Party to:

- (a) officers or employees of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of each Disclosing Party (a **Direction**);
- (b) any of the following persons:
 - (i) legal, accounting, financial, engineering or other advisers or consultants to the Recipient;
 - (ii) a shareholder (or holder of a similar interest) in the Recipient (and their officers or employees);
 - (iii) a bank, other financial institution or lender relevant to the Recipient or a person referred to in clause 8.3(b)(ii) (and their officers or employees), to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
 - (iv) a bona fide potential:
 - (A) purchaser of the Recipient; or
 - (B) assignee, transferee or purchaser of the Recipient's interest in this Agreement (and their officers, employees and consultants); or
 - (v) in the case of the Customer, for the purposes of or incidental to management of procurement by the Customer and its Related Bodies Corporate (including by uploading copies of this Agreement to its contract management Software);

in each case if the person to whom disclosure is to be made is under a legal duty to maintain confidentiality in the Confidential Information or has, before the disclosure, been given a Direction and the person agrees with the Recipient to comply with obligations in relation to the Confidential Information that are equivalent to those of the Recipient as set out in this Agreement.

8.4 Recipient's obligations

A Recipient must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause 8.3 complies with its Direction; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a Direction.

8.5 Disclosure law

If a Recipient is required by law to disclose any Confidential Information of a Disclosing Party to a third person (other than in accordance with clause 8.3) the Recipient must:

- (a) before doing so:
 - (i) notify the Disclosing Party; and
 - (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is confidential information of the Disclosing Party.

9. Privacy and SPAM

9.1 Privacy

- (a) In performing this Agreement, C9 shall comply with its privacy policy in force from time to time. C9's privacy policy as at the date of this Agreement is at <http://www.inboundio.com/Privacy-Policy>. C9's privacy terms are subject to change from time to time, provided that any such change will not materially reduce the level of privacy protection for Customer Data during the period for which any Service Fees have been paid.
- (b) C9 may provide the Software from any locations, and/or through the use of contractors, worldwide.
- (c) The Customer agrees to provide any information, and to obtain any consents, relevant to its use of the Software, including those in relation to the collection, use, disclosure and storage of personal information of any individual whose personal information may be included in Customer Data.
- (d) The Customer warrants that any personal information or sensitive information provided to C9 in connection with this Agreement has been collected, disclosed and otherwise dealt with by the Customer in compliance with the *Privacy Act 1988* (Cth).
- (e) The Customer indemnifies C9, its Related Bodies Corporate, and each of their respective officers, employees and agents (**those indemnified**) and holds them harmless against any loss, damage, cost, expense, claim or liability suffered or incurred by them in connection with any act or practice involving personal information or sensitive information engaged in by the Customer or its officers, employees and agents where that act or practice would constitute a breach of the *Privacy Act 1988* (Cth).

9.2 SPAM

- (a) The Customer must not use the Platforms in any way (directly or indirectly) to send, transmit, handle, distribute or deliver any unsolicited commercial electronic messages:
 - (i) in violation of:
 - (A) the SPAM Act 2003 (Cth);
 - (B) the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003 (Pub.L. 108-187);

- (C) the *Fighting Internet and Wireless Spam Act* SC 210 (the Canada Anti-Spam Legislation); and/or
- (D) any other anti-SPAM laws applicable to the Customer;
- (ii) to an email address obtained via internet harvesting methods or any surreptitious methods; or
- (iii) to an email address that is incomplete, inaccurate and/or not updated for all applicable opt-out notifications in accordance with industry best practice.

9.3 Email content

- (a) The Customer must ensure that all electronic communications (including emails) sent, or caused to be sent to or through the Software do not:
 - (i) use or contain invalid or forged headers;
 - (ii) use or contain invalid or non-existent domain names;
 - (iii) employ any technique to otherwise misrepresent, hide or obscure any information in identifying the point of origin or the transmission path of the electronic ;
 - (iv) use any other means of deceptive addressing;
 - (v) use a third party's internet domain name without their consent, or be relayed from or through a third party's equipment without the third party's permission;
 - (vi) contain false, deceptive or misleading information in the subject line or otherwise contain false, deceptive or misleading content;
 - (vii) use any of C9's Intellectual Property (including trade marks, taglines or logos) without C9's prior written consent, and only then in accordance with clause 7.1; or
 - (viii) use any email purchased lists.
- (b) The Customer must use commercially reasonable endeavours to comply with the Messaging, Malware and Mobile Anti-Abuse Working Group Sender Best Communications Practices as amended from time to time, available as at the date of this Agreement at https://www.m3aawg.org/sites/default/files/document/M3AAWG_Senders_BCP_Ver3-2015-02.pdf.
- (c) The Customer warrants that:
 - (i) all electronic communications sent by or for the Customer using the Software will contain:
 - (A) an option to allow the recipient to unsubscribe, opt-out or otherwise demand that use of its information for unsolicited, impermissible and/or inappropriate communication(s) be stopped; and
 - (B) the ability to advise the Customer of the recipient's exercise of this option; and
 - (ii) the Customer will promptly comply with all opt-out, unsubscribe, "do not call" and "do not send" requests received by the Customer.

10. Compliance with law

- (a) C9 is not liable to the Customer under this Agreement or otherwise if and to the extent Customer's access to or use of any of the Platforms is contrary to any obligations, including those owed under contract or any laws.
- (b) C9 may (but is not bound to) make Customer Data and any other information (in any form) relevant to the Customer's relationship with C9 under this Agreement available to any person who provides reasonable evidence to C9 of their right to this, including a law enforcement officer, a person representing any professional or industry standards organisation and representatives of any person to whom Customer Data pertains.
- (c) The Customer shall indemnify C9, its Related Bodies Corporate, and each of their respective officers, employees and agents (**those indemnified**) against all loss (including costs, expenses, damages and liability, whether actual or prospective) incurred or likely to be incurred by those indemnified as a result of:
 - (i) C9's collection, use, disclosure, storage or other involvement with Customer Data and any other information (in any form) relevant to Customer's relationship with Supplier under this Agreement; and
 - (ii) acting in accordance with the preceding subclause.

11. Acts beyond C9's control

- (a) The provisions of this clause 11 apply if any event beyond the reasonable control of C9 occurs, including without limitation any act or omission of C9, or any Change in law, which:
 - (i) causes a reduction in the Service Fees payable by the Customer; or
 - (ii) diminishes C9's ownership, distribution or licensing rights in respect of the Software; or
 - (iii) in any other way materially increases C9's obligations or materially impairs the benefit to C9 of this Agreement; or
 - (iv) prevents C9 from being able to supply all or any of the Software to the Customer.
- (b) If any of the events specified in clause 11(a) occurs, C9 and the Customer must in good faith within 30 days of such occurrence determine what changes to this Agreement, including early termination, are necessary to protect C9's position.
- (c) If C9 and the Customer fail to agree under clause 11(b) the changes which are necessary within 10 days of commencing the consultation, C9 may terminate this Agreement upon at least 10 days' prior written notice to the Customer.

12. Warranties

12.1 Capacity

Each party warrants that it has the power to execute, deliver and perform its obligations under this Agreement and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

12.2 Standard of Service

- (a) Except as otherwise provided in this Agreement:
 - (i) the Software is provided to the Customer as is and with all its faults; and
 - (ii) C9 and the persons through whom C9 is authorised to license the Customer's use of the Software make no warranties whatsoever, express or implied, in respect of the Software, including without limitation, any implied warranties of merchantability, fitness for a particular purpose.
- (b) In no event shall C9 be liable to the Customer for any cost, claim or expense arising out of:
 - (i) the Customer's use of the Software, where such use is in breach of this Agreement;
 - (ii) in the case of the Whitelabel Customer, where the Whitelabel User's use of the Whitelabel Version is in breach of this Agreement or any Sub-Licence.
- (c) C9 warrants that it has the right and authority to permit the Customer to use the Software on the terms and conditions of this Agreement.
- (d) C9 will use commercially reasonable efforts to keep the Software and all data and information within the Software free from attack by hackers, malicious code, spiders, worms, or similar devices.
- (e) The Customer acknowledges that system failures or other events beyond C9's reasonable control may interrupt the Customer's access to the Platforms, and C9 may not be able to provide advance notice of such interruptions.
- (f) Except as expressly provided to the contrary in this Agreement and subject to clause 13.3, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Software or to this Agreement are excluded.

12.3 Customer warranties and acknowledgements

- (a) The Customer warrants that it has not relied upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by C9 nor upon any representation or warranty made by C9 other than those expressly provided in this Agreement.
- (b) The Customer warrants that it has not relied on any representation made by C9 which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by C9.
- (c) The Customer acknowledges that to the extent C9 has made any representation which is not otherwise expressly stated in this Agreement, the Whitelabel Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- (d) The Customer acknowledges and agrees that:
 - (i) prior to entering into this Agreement it has been given a reasonable opportunity to examine and satisfy itself regarding all goods and services which are the subject of this Agreement and that prior to entering into this Agreement it has availed itself of that opportunity;

- (ii) at no time prior to entering into this Agreement has it relied on the skill or judgment of C9 and that it would be unreasonable for the Customer to rely on any such skill or judgment; and
- (iii) where any acquisition of goods under this Agreement has been made by reference to a sample or demonstration model, prior to entering into this Agreement the Customer has been given a reasonable opportunity:
 - (A) to satisfy itself that the goods correspond with the sample or demonstration model as to quality, state and condition; and
 - (B) to examine the sample or demonstration model for any apparent defects, and that it has availed itself of that opportunity.

13. Liability

13.1 Exclusion of consequential loss

Under no circumstances, unless otherwise provided at law (and then only to the minimum extent permitted), will C9 be liable to the Customer for loss of profits, loss of use of contracts, loss of use of the Software or for any indirect economic or consequential loss whatsoever, whether arising from interrupted use, replacement of Software or other change to the Software, errors in data, negligence, breach of contract or otherwise.

13.2 Limitation of liability

To the extent permitted by law, C9's liability in relation to this Agreement in each 12 month period commencing on the Commencement Date and each anniversary of that date (each a **Service Year**), including the performance or otherwise of its obligations under this Agreement or in respect of negligence or other tort, shall not exceed the amount of Service Fees actually received by C9 from the Customer in that Service Year, pursuant to this Agreement.

13.3 Statutory limitations

- (a) Where any law implies in this Agreement any term, condition or warranty, and that Act avoids or prohibits provisions in a contract excluding or modifying the application or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement.
- (b) To the maximum extent permitted by any such Act, the liability of C9 for any breach of such term, condition or warranty will be limited, at the option of C9, to any one or more of the following:
 - (i) if the breach relates to the supply of goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of such goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) if the breach relates to the supply of services:
 - (A) the supplying of the services again; or

- (B) the payment of the cost of having the services supplied again.
- (c) The application of the *United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention)* to this Agreement (by virtue of any law relevant to this Agreement) is excluded.
- (d) In respect of any claim between the parties under or in connection with this Agreement, the parties agree that to the maximum extent permitted by law, the operations of Part 4 of the *Civil Liability Act 2002 (NSW)* and of any laws having a similar effect in the Commonwealth and other States and Territories of Australia are excluded and have no application or effect insofar as any of them would apportion liability to C9 which would not have been so apportioned but for such laws.

14. Customer Indemnity

The Customer shall at all times indemnify and hold harmless C9, its Related Bodies Corporate, and each of their respective officers, employees and agents (**those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) any breach by the Customer of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act, error or omission of the Customer, or any of the Customer's officers, employees or agents.

15. Suspension

15.1 Right to suspend

C9 may suspend access to the Software:

- (a) if the Customer materially breaches this Agreement and fails to timely cure the breach;
- (b) if C9 reasonably believes that the Customer's use of the Software will subject C9 to immediate liability or adversely affect the integrity, functionality, or usability of the Software;
- (c) for scheduled maintenance;
- (d) to enjoin a threat or attack on the Software; or
- (e) if the Software becomes prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship.

15.2 Acknowledgement

The Customer acknowledges that access to and use of the Software may be temporarily unavailable, without prior notice, for any unanticipated or unscheduled downtime or unavailability of all or any portion of the Software, including system failure or other events beyond the reasonable control of C9 and its third party provider.

15.3 Notification by C9

When feasible, C9 will notify the Customer of any the Software suspension beforehand and give the Customer reasonable opportunity to take remedial action.

15.4 Exclusion of liability

C9 is not responsible (in negligence or otherwise) for any damage, liabilities, or losses (including any loss of data or profits) that or any other consequences that the Customer may incur as a result of any interruption or suspension of the Software or removal of Customer Data as described above.

16. Termination for Customer's Insolvency Event

16.1 Insolvency Event

An **Insolvency Event** occurs if:

- (a) the Customer disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases to carry on business or is deregistered;
- (c) the Customer ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Customer's assets, operations or business;
- (e) any step is taken to enter into any arrangement between the Customer and its creditors;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person to the whole or part of the Customer's assets, operations or business; or
- (g) where the Customer is a partnership, any step is taken to dissolve that partnership or a partner dies.

16.2 Effect of Insolvency Event

If an Insolvency Event occurs, C9 may either terminate this Agreement immediately by written notice to the Customer or the person in whom this Agreement is vested as a result of the Insolvency Event.

17. Default by Customer

17.1 Event of default

If the Customer fails:

- (a) to perform or comply with any of its obligations under this Agreement; or
- (b) to make a payment due to C9 under this Agreement;

(each a **Default**), then C9 may serve a notice on the Customer specifying a Default and requiring the Customer to remedy the Default within 30 days.

17.2 Termination

If the Customer has not remedied the Default within the time specified in a notice served under clause 17.1, C9 may immediately terminate this Agreement by written notice to the Customer.

17.3 Effect of termination

If C9 terminates this Agreement under clause 17.2, without limiting its rights at law, C9 may recover from the Customer the amounts described in clause 18.2.

18. Termination for convenience

18.1 Termination for convenience

In addition to any other rights that each party may have under this Agreement, either party may at any time, in its absolute discretion and without cause, terminate this Agreement in whole or in part by 7 days written notice to the other party.

18.2 Remedies

If this Agreement is terminated by the Customer under clause 18.1, the Customer must pay C9 all amounts due and owing to C9 under this Agreement as at the date of termination and the Customer will not be entitled to any refund for any prepaid Service Fees as at the date of termination.

If C9 terminates this Agreement under clause 18.1 without cause, it must refund the Customer the balance of any prepaid Service Fees as at the date of termination (net of any other amounts owing to C9) and this will be the sole remedy of the Customer.

19. Obligations on termination

19.1 Cease access and use

On termination of this Agreement for any reason, the Customer must cease to access and use all the Platforms.

19.2 Migration and copies of data

On termination or expiry of this Agreement, C9 must provide to the Customer a copy of all the Customer Data stored by C9 in connection with the Software at the date of termination.

19.3 Whitelabel Customer obligations

- (a) In addition to clause 19.1, any Whitelabel Customer must:
 - (i) cease marketing and distribution of the Whitelabel Version;
 - (ii) terminate any Sub-Licences and notify all Whitelabel Users that their right to access and use the Whitelabel Version is expired or terminated (as applicable);
 - (iii) cease to identify itself in any way as a licensee or former licensee of C9; and
 - (iv) take all reasonable steps to ensure that Whitelabel Users do not identify themselves as licensees or former licensees of C9;
- (b) Notwithstanding and in addition to any other obligation arising under this Agreement or at law, indemnify and hold harmless C9, its Related Bodies Corporate, and each of their respective officers, employees and agents in respect of any liability arising to a Whitelabel User in respect of the termination of a Sub-Licence.

20. Effect of termination

- (a) Action taken by a party under clauses 15, 16, 17, 18, or 21 does not prejudice:
 - (i) any other rights, remedies, powers and discretions of the party including rights of the party to deduct or withhold amounts owing to the other party or recover amounts owing to the party by the other party; and
 - (ii) the accrued liabilities and obligations of the other party,all of which continue in full force and effect as if this Agreement had not been terminated.
- (b) Clauses 6, 7, 8, 9, 12, 13, 14, 17.3, 18.2, 19 all survive expiry or termination of this Agreement.

21. Dispute Resolution

21.1 Dispute Resolution Process

- (a) If a party considers that a dispute exists in connection with this Agreement (**Dispute**), that party must give the other party notice detailing the nature of the Dispute (**Dispute Notice**).
- (b) The Dispute Notice must:
 - (i) state that the notice is given under this subclause;
 - (ii) describe the nature of the Dispute; and
 - (iii) nominate a representative of the party who is authorised to negotiate and settle the Dispute on the party's behalf.
- (c) The other party must, within seven days after receipt of a Dispute Notice, nominate in writing to the other party a representative authorised to negotiate and settle the Dispute on its behalf.
- (d) The parties' representatives must meet and negotiate with a view to resolving the Dispute.
- (e) If the Dispute has not been resolved within 21 days of the date of the Dispute Notice, either party may refer the Dispute to a representative of the parties for resolution.
- (f) The representatives must meet and negotiate with a view to resolving the Dispute within 14 days of the Dispute being referred to them (or such longer period as the chief executive officers agree). If the chief executive officers fail to meet within that time, or fail to resolve the Dispute within 14 days of the date they first meet in accordance with this subclause, either party may commence proceedings in the courts of Queensland, Australia.

21.2 Limitation on proceedings

The parties agree that, prior to commencing any proceedings in respect of a Dispute under this Agreement, the party seeking to commence such proceedings must comply fully with this clause 21 (regardless of the level or levels on which the Dispute has previously been considered) except where the party seeks urgent interlocutory, injunctive or declaratory relief.

22. GST

22.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

22.2 Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

22.3 GST payable on taxable supply

- (a) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to C9 if and when C9 provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Agreement then C9 must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

23. Notices

23.1 Notices

Any notice, demand, consent, approval, request or other communication to be given under this Agreement (**Notice**) must be in writing and, unless this Agreement provides otherwise, in English.

23.2 Service of Notices

- (a) A Notice must be given at the recipient's Address for Service by being:
 - (i) hand delivered;
 - (ii) sent by facsimile;
 - (iii) sent by email;
 - (iv) sent by prepaid mail within Australia; or
 - (v) sent by prepaid Express Post International (or overseas equivalent) airmail if the sender and the recipient are in different countries.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted:
 - (A) before 5 pm on a Business Day, on that Day;

- (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent,
- (iii) sent by email, on the earlier of the sending party receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sending party, such time to be determined by reference to the device from which the email was sent;
 - (iv) sent by prepaid mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (v) sent by prepaid Express Post International (or overseas equivalent) airmail between countries, on the date that is 10 Business Days after the date of posting.

24. Assignment

- (a) The Customer must not assign or novate any of its rights or obligations under this Agreement without the prior written approval of C9 on such terms and conditions as are agreed in writing by the parties. Any Change of Control of the Customer shall be taken to be an assignment for the purposes of this clause.
- (b) C9 may assign or novate any of its rights or obligations under this Agreement at any time in its absolute discretion.

25. General provisions

25.1 Entire agreement

This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

25.2 Waiver

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

25.3 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Agreement.

25.4 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Agreement,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

25.5 Governing law and jurisdiction

- (a) The laws applicable in Queensland govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts competent to hear appeals from those courts.

25.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

25.7 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

25.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

25.9 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

25.10 Legal expenses

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

26. Definitions

In this Agreement, unless the context clearly indicates otherwise:

Agreement means these Terms and Conditions of Service.

Address for Service means the address of each party appearing in this Agreement or any new address notified by any party to all other parties as its new Address for Service.

Authorisation means any consent, authorisation, registration, filing, lodgement, notification, agreement, certificate, commission, lease, licence, permit, approval or exemption from, by or with an Authority required to perform C9's obligations under this Agreement.

Authority means any government department, local government council, government or statutory authority or any other party under a law which has a right to impose a requirement or whose consent is required with respect to the Software, the Services or C9's performance of its obligations under this Agreement.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Brisbane, and concludes at 5 pm on that day.

Change in Control means, in relation to a party, a change of the entity which Controls the party or, if no entity Controls the party, the assumption of Control of the party by an entity.

Change in Law means:

- (a) the adoption, enactment or application to the Customer or C9 of any Legislative Requirements not existing, foreseeable or otherwise applicable to the Customer or C9 on the Date of Agreement; or
- (b) any change in Legislative Requirements or the application or interpretation of a Legislative Requirement, after the Date of Agreement,

in either case that materially and adversely affects (in time and/or cost) the ability of the Customer or C9 to perform their obligations under this Agreement, provided that the following do not constitute a Change in Law:

- (a) a change in a Legislative Requirement imposing a tax or rate of tax; or
- (b) the application to the Customer or C9, of a Legislative Requirement that was in existence at the Commencement Date that by its terms became applicable to the Customer or C9 after the Commencement Date.

Commencement Date means the date the Customer accepts the terms and conditions of this Agreement.

Content means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software applications, software development kits, application programming interfaces, software libraries, code samples, and other resources.

Control has the meaning set out in section 50AA of the Corporations Act

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Data means any Content that the Customer, the Customer's Whitelabel Users, or any other user provides to C9 in connection with the Customer's use of the Platforms, and any results derived from the use of Customer Data with C9, excluding any feedback, suggestions, or requests for improvements that the Customer provides to C9.

End User means a Customer who:

- (a) is subscribing for the Lite or Standard version of the Software; and
- (b) has specified in the relevant checkbox that they are entering into this Agreement as an End User.

Expiry Date means the date that this Agreement expires or terminates in accordance with its terms and conditions.

GST means any form of goods and services tax payable under the GST Law.

GST Law means the *A New Tax Software (Goods and Services Tax) Act 1999* (Cth).

Initial Term means:

- (a) where the Customer has specified that the Customer will pay the Monthly Charge for the Software, the initial term of one month from the Commencement Date; and
- (b) where the Customer has specified that the Customer will pay the Yearly Charge, the initial term of 12 months from the Commencement Date.

Intellectual Property means all intellectual property rights, including:

- (a) copyright, trademarks, trade secrets, designs, drawings, patents, know-how, secret process and other similar proprietary rights, whether or not registered; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

conferred under statute, common law or equity in any country.

Legislative Requirements means:

- (a) all Authorisations;
- (b) all Commonwealth and State legislation including regulations, by laws and other subordinate legislation, orders and awards; and
- (c) any guidelines of the Commonwealth, State and local governments and Authorities with which either party is legally required to comply.

Losses means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Monthly Charge means the monthly charge payable by the Customer for the use of the Software as specified at <http://www.inboundio.com/plans> and as adjusted from time to time in accordance with clause 5.

Platforms means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by C9, including, but not limited to, all web pages controlled by C9 and the Software.

Post means place on or into the Platforms any Content or material of any sort by any means.

Release means each release of the Software that corrects an error or enhances the previous form of the Software.

Related Body Corporate has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

Renewal Term means:

- (a) where the Customer has specified that the Customer will pay the Monthly Charge for the Software, a renewal term of one month; and
- (b) where the Customer has specified that the Customer will pay the Yearly Charge, a renewal term of 12 months.

Service Fees means the Monthly Charge or Yearly Charge (as the case requires) payable to C9 under this Agreement, as specified at <http://www.inboundio.com/plans>.

Software means the version of the InBoundio software (Lite, Standard or Pro) to which access is to be granted to the Customer by C9.

Software Services means the provision of access to the Software by C9 and the use by the Customer of the Software in accordance with the terms and conditions of this Agreement.

Sub-Licence means the form of sub-licence between the Whitelabel Customer and its Whitelabel Users.

Term means the period from the Commencement Date to the Expiry Date, including the Initial Term and any Renewal Terms.

Third Party Software means any software owned and provided by a party who is not C9 or the Customer.

Whitelabel Customer means a Customer who:

- (a) is subscribing for a Pro version of the Software; and
- (b) has specified in the relevant checkbox that they are entering into this Agreement as a Whitelabel Customer.

Whitelabel User means a sub- licensee of the Whitelabel Version.

Whitelabel Version means the rebranded software product created by the Customer using the functionality of the Pro version of the Software.

Yearly Charge means the yearly charge payable by the Customer for the use of the Software as specified at <http://www.inboundio.com/plans> and as adjusted from time to time in accordance with clause 5.

27. Interpretation

27.1 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to a **clause** is a reference to a clause of this Agreement;
- (e) **clause headings** are inserted for convenience only and do not form part of this Agreement;
- (f) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

- (g) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (h) a reference to a **corporation** includes its successors and permitted assigns;
- (i) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement;
- (j) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (k) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) the words **at any time** mean at any time and from time to time;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders; and
- (s) a reference to a thing includes each part of that thing.

27.2 Construction

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

27.3 English language prevails

This Agreement is made only in the English language. If there is any conflict in meaning between the English language version of this Agreement and any version or translation of this Agreement in any other language, the English language version shall prevail.