



## END USER LICENSE AGREEMENT

This End User License Agreement ("EULA") is entered into between the entities reflected below (each a "Party" and collectively the "Parties"), effective on the date indicated:

| "Innovapptive"    | Address   | "End User" | Address |
|-------------------|---|------------|---------|
| Innovapptive Inc. | 24 Greenway Plaza Suite 1501<br>Houston, TX 77046 |            |         |
| EFFECTIVE DATE    |   |            |         |

**1. Scope of Agreement.** Under this EULA, Innovapptive will provide End User with Innovapptive's proprietary "Connected Workforce Platform" ("CWP Solution"), implemented for use in one or more of End User's business processes, in conjunction with the "SAP Business Suite" installed at End User's site.

### 1.1 Ordering Process.

- (a) **Order(s).** From time to time during the term of this EULA, End User may acquire from Innovapptive the CWP through a properly-executed Order that incorporates by reference the terms of this EULA (each, an "Order"). Each Order may have one or more Schedules.
- (b) **Schedule(s).** Each Schedule attached to an Order will contain the components of the CWP Solution provided pursuant to this EULA, including the use parameters such as Number of Users, Term, and Price for the components acquired.

**1.2 Connected Workforce Platform ("CWP Solution").** The configuration of the CWP provided by Innovapptive pursuant to this EULA will comprise some, if not all, of the products and services described below, if specified in an Order.

(a) **Software.** The following items are all referred to in this EULA as "Software."

(i) **RACE.** As specified in a Schedule, Innovapptive will provide its proprietary "Rapid Application Configuration Engine" software programs ("RACE"), which may include (A) RACE Lite, (B) RACE Configuration Tool and (C) RACE Dynamic Forms Builder Tool.

(ii) **Mobile Solutions.** As specified in a Schedule, Innovapptive will provide its proprietary software programs for mobile devices, which may include (A) desktop software, and (B) mobile device software.

(iii) **3rd Party Software.** As specified in a Schedule, Innovapptive will provide third party software programs redistributed by Innovapptive, which may include (a) desktop software, and (b) mobile device software.

### 1.3 End User Provided Items.

- (a) **SAP Business Suite.** This set of software from SAP is installed on End User's site and is the business application with which the CWP Solution is implemented to communicate. End User has or will acquire the SAP Business Suite independent from this EULA.
- (b) **End User-Owned Data.** As between Innovapptive and End User, End User owns all data or information that is provided or uploaded by End User into the CWP Solution (**End User Data**). During the term of a Schedule, End User may export its End User Data as allowed by functionality within the CWP Solution, and upon written request, Innovapptive will provide such End User Data to End User.

### 1.4 Term and Termination.

- (a) **Term of this EULA.** This EULA will stay in effect until the last Order or SOW has expired or been terminated. Each Order will stay in effect until all of its Schedules have expired or been terminated.



- (b) **Termination of this EULA for Cause.** If either Party is in material breach of this EULA, the other Party may terminate this EULA, in whole or in part, if the breaching Party has not cured the breach by the end of a 30-day cure period following its receipt of written breach notice from the non-breaching Party.
- (c) **Return of Property upon Termination.** Upon termination of this EULA for any reason, End User must pay Innovapptive all unpaid, invoiced amounts, and destroy or return all property of Innovapptive. Upon Innovapptive's request, End User will confirm in writing its compliance with this destruction or return requirement. Upon request within 30 days after termination of this EULA, Innovapptive will make End User Data available to End User in an industry standard format. After such 30-day period, Innovapptive has no obligation to maintain the End User Data and will destroy it.
- (d) **Service Suspension.** Innovapptive may, after giving End User reasonable notice, temporarily suspend End User's access to the CWP Solution if (a) End User is 30 days or more overdue in its payment of any fees due under this EULA, or (b) Innovapptive believes in good faith that, in using the CWP Solution, End User has violated a law or Section 1.6 below.

#### 1.5 End User Obligations.

- (a) **Cooperation.** End User agrees to provide, or provide access to, the following: office accommodations, facilities, equipment, suitably configured computer equipment, assistance, cooperation, complete and accurate information and data from its officers, agents and employees, coordination onsite, online and telephonic meetings and other resources as reasonably necessary for satisfactory and timely performance of this EULA.
- (b) **Restrictions.** End User may not (i) sell, resell, rent, lease or sublicense any CWP Solution or use it in a service provider capacity without a signed amendment of this EULA; (ii) use a CWP Solution to store or transmit infringing, unsolicited marketing emails, libelous, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the CWP Solution; (iv) attempt to gain unauthorized access to the CWP Solution; (v) disassemble, reverse engineer or decompile a CWP Solution; or (vi) use the CWP Solution to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. In using the CWP Solution, End User is responsible for taking measures to ensure Users adhere to the terms of this EULA, including preventing unauthorized access to the CWP Solution, promptly notifying Innovapptive of any unauthorized access, and using the CWP Solution only in accordance with its Documentation.

#### 2. Licenses. The following license terms apply only to the component described.

**2.1 Software.** Subject to the terms of this EULA, Innovapptive grants to End User a non-exclusive, non-transferable and worldwide license to install and use the Software up to the use parameters such as License Term, Number of Users, Term, and Price for the components acquired.

**2.2 Documentation.** Subject to the terms of this EULA, Innovapptive grants to End User a non-exclusive, non-transferable and worldwide license to use the end user and technical documentation for the CWP Solution provided or made available by Innovapptive ("**Documentation**"), including the right to customize the Documentation for End User's own internal purposes, but not for commercialization or distribution to unauthorized third parties.

**2.3 End User Data.** End User owns all data or information that is provided or uploaded by End User into the CWP Solution (**End User Data**). End User grants to Innovapptive the right to use the End User Data solely for purposes of performing under this EULA. Notwithstanding any other provision in this Agreement, Innovapptive may provide certain User registration and statistical information such as usage or User traffic patterns in aggregate form to third parties, provided that such information does not include End User or personally identifying information. Innovapptive may access End User's User accounts, including without limitation End User Data, solely to respond to service or technical problems affecting the Services.

#### 3. Payment Terms.

**3.1 Fees.** End User must pay all fees due under this EULA within 30 days of the invoice date (in US\$ unless provided otherwise in the applicable Order), except the portion of any invoices disputed in good faith as being inaccurate. Innovapptive may charge 1.5% late fees if End User is 30 days late on a payment. No End User purchase order is required unless specified in an Order.

**3.2 Taxes.** Innovapptive's fees are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**") and End User is responsible for payment of all Taxes, excluding only Taxes based on Innovapptive's net income. If Innovapptive has the legal obligation to pay or collect Taxes for which End User is responsible pursuant to this Section 3.2, the appropriate



amount will be invoiced to and paid by End User, unless it provides Innovapptive with a valid tax exemption certificate authorized by the appropriate taxing authority.

**3.3 Billing and Contact Information.** End User will provide complete, accurate and up-to-date billing and contact information to Innovapptive at [accounts@innovapptive.com](mailto:accounts@innovapptive.com).

**3.4 Expenses.** In addition to fees for the CWP Solution, End User will reimburse Innovapptive for reasonable travel and other expenses, pre-approved in writing by End User incurred in connection with its performance under this EULA or an Order Form. In connection with any invoice for expense reimbursement, Innovapptive will provide copies of receipts and other documents reasonably necessary to verify the amount and nature of any such expenses.

#### 4. Proprietary Rights, Confidentiality.

**4.1 Proprietary Rights.** Innovapptive and its licensors own all right, title and interest in the CWP Solution, which is licensed only and not sold – no title to or ownership is transferred to End User. End User may not remove from or modify any proprietary marking or restrictive legends on the CWP Solution. **All rights not expressly granted by Innovapptive in this EULA are specifically reserved by Innovapptive.**

##### 4.2 Mutual Confidentiality.

**(a) Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**).

**(b) Protection of Confidential Information.** During the term of this Agreement, and for five years thereafter, a Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) and will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this EULA. The Recipient must make commercially reasonable efforts to limit access to Confidential Information to those of its employees and contractors who need such access for purposes consistent with this EULA and who have signed confidentiality agreements with Recipient no less restrictive than the terms of this EULA.

**(c) Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.

**4.3 Suggestions or Feedback.** If End User provides feedback or suggestions about the CWP Solution, then Innovapptive (and those it allows to use its technology) may use such information without obligation to End User.

#### 5. Security and Disaster Recovery.

##### 5.1 Security.

**(a) Security Measures.** In order to protect End User Data, Innovapptive will make commercially reasonable efforts to (i) implement and maintain all reasonable security measures appropriate to the nature of the End User Data, including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such End User Data; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its security measures; and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of End User Data that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. Such security measures will conform in all material respects to SAP's most current SOC 2, Type II audit (**SOC 2 Report**), which is incorporated herein by reference.

**(b) Notice of Data Breach.** If Innovapptive reasonably determines that End User Data has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this EULA, Innovapptive will alert End User of any such



data incident within two business days, and promptly take such reasonable actions as may be necessary to preserve forensic evidence and eliminate the cause of the data incident. Innovapptive will give highest priority to promptly responding and remedying any data incident and will devote such resources as may be required to accomplish that goal. Innovapptive will provide End User with all information necessary to enable End User to fully understand the nature and scope of the data incident. To the extent that End User, in its sole reasonable discretion, deems warranted, End User may provide notice to any or all parties affected by any data breach. In such case, Innovapptive will consult with End User in a timely fashion regarding appropriate steps required to notify third parties. Innovapptive will provide End User with information about what Innovapptive has done or plans to do to minimize any harmful effect or the unauthorized use or disclosure of, or access to, End User Data.

**5.2 Disaster Recovery Plan.** Innovapptive will keep in place a disaster recovery plan for business continuity and infrastructure redundancy (DRP) to address any event or circumstance that could materially and adversely affect the CWP Solution (**Disaster**). Innovapptive will provide a copy of the DRP to End User upon request, and periodically update and test the operability of the DRP. If a Disaster occurs, Innovapptive will implement the DRP and use commercially reasonable efforts to restore the CWP Solution.

## **6. Warranties.**

**6.1 CWP Solution Warranty.** Innovapptive warrants to End User that: (a) the CWP Solution will contain the features and functions specified in the Documentation; (b) the CWP Solution will perform in accordance with the SLAs specified in Exhibit A; (c) that Support Services may change but will not materially degrade during any paid term, and (d) to the best of Innovapptive's knowledge, the CWP Solution contain no viruses, trap doors, trojan horses, node locks, time bombs or other harmful code or destructive elements; provided, however, for any component of the CWP Solution provided by a third party, Innovapptive's only warranty obligation is to pass through warranties for such component to End User and to cooperate with the third party for any warranty claims pursuant to the Support obligations in this EULA.

**6.2 Remedies for Warranty Claims.** For any breach of the warranty in Section 6.1, End User's exclusive remedy, and Innovapptive's entire liability, are the Support and Maintenance obligations in Exhibit A.

**6.3 Disclaimer.** INNOVAPPTIVE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE INNOVAPPTIVE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE CWP SOLUTION, INNOVAPPTIVE DOES NOT GUARANTY THAT THE CWP SOLUTION CANNOT BE COMPROMISED. END USER UNDERSTANDS THAT THE CWP SOLUTION MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.

## **7. Indemnities.**

- 7.1 Claims.** Innovapptive will defend or settle any third-party claim against End User to the extent such claim alleges that the CWP Solution infringes or misappropriates a United States intellectual property right, if End User promptly notifies Innovapptive of the claim in writing, cooperates with Innovapptive in the defense, and allows Innovapptive to solely control the defense or settlement of the claim; provided, however that Innovapptive may not settle any claim that affects End User or this EULA without End User's prior written approval, which may not be unreasonably withheld, delayed or conditioned.
- 7.2 Costs.** Innovapptive will pay or reimburse End User for any Innovapptive-negotiated settlement amounts or court-awarded damages.
- 7.3 Remedies.** If such a claim appears likely, then Innovapptive may modify the CWP Solution, procure the necessary rights, or replace it with a functional equivalent. If Innovapptive determines that none of these are commercially feasible, then Innovapptive may terminate the applicable Order, in whole or in part, and will refund any prepaid and unused fees.
- 7.4 Exclusions.** Innovapptive has no obligation under this Section 7 to the extent of any claim arises from: (a) Innovapptive's compliance with End User's specifications, where there would be no infringement but for these specifications; (b) a combination of the CWP Solution with other technology or aspects where the infringement would not occur but for the combination; (c) use of End User Data; or (d) technology or aspects not provided or recommended by Innovapptive. **THIS SECTION 7 CONTAINS END USER'S EXCLUSIVE REMEDIES AND INNOVAPPTIVE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**



**8. Insurance.** Innovapptive agrees to carry and maintain during the term of this EULA, at its own cost, the insurance policies and coverage amounts set forth below. Upon End User's request, Innovapptive will provide evidence of such insurance; such certificates of insurance will provide at least 30 days' written notice to End User of any non-payment for such insurance coverage.

| COVERAGE TYPE  | LIMITS   |
|--|--|
| Statutory worker's compensation                        | Not less than \$1,000,000 each accident, each employee and policy limit                                      |
| Commercial general liability                           | Per occurrence limit of not less than \$2,000,000 and a general aggregate limit of not less than \$4,000,000 |
| Professional Liability (E&O) & Cyber/Network Liability | Not less than a \$5,000,000 aggregate limit and \$5,000,000 each claim                                       |
| Umbrella Liability                                     | \$3,000,000 each occurrence and \$3,000,000 in the aggregate   |

**9. Limitations on Liability.**

**9.1 Disclaimer of Certain Damages.** NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EULA (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION, LOSS OF BUSINESS, AND LOST PROFITS) EVEN IF PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2 Cap on Actual Damages.** EXCEPT FOR INDEMNITY OBLIGATIONS, VIOLATIONS OF A PARTY'S INTELLECTUAL PROPERTY OR CONFIDENTIALITY OBLIGATIONS, OR ITS ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS EULA (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED: (a) FOR CLAIMS COVERED BY INNOVAPPTIVE'S INSURANCE, THE APPLICABLE LIMIT OF SUCH INSURANCE; OR (b) FOR ALL OTHER CLAIMS NOT COVERED BY SUCH INSURANCE, THE GREATER OF THE AMOUNT PAID OR PAYABLE BY END USER UNDER THE APPLICABLE ORDER WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.

**10. General.**

**10.1 Governing Law and Forum.** This EULA is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this EULA. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Harris County, Texas, and End User submits to this personal jurisdiction and venue. Nothing in this EULA prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

**10.2 Entire Agreement and Changes.** This EULA, Orders and SOWs constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Neither party is relying on any representation promise or inducement concerning this subject matter, oral or written, not included in this EULA. No modification of this EULA is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

**10.3 No Assignment.** End User may not assign or transfer this EULA, in whole or in part, to a third party without Innovapptive's prior written consent, which may not be unreasonably withheld, delayed or conditioned.

**10.4 Enforceability and Force Majeure.** If any term of this EULA is invalid or unenforceable, the other terms remain in effect. Neither party is liable for events beyond their reasonable control, including without limitation force majeure events.

**10.5 Money Damages Insufficient.** Any breach by a party of this EULA or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

**10.6 No Additional Terms.** Innovapptive rejects additional or conflicting terms of any End User form-purchasing document.

**10.7 Survival, CISG and Independent Contractor.** Any terms that by their nature survive termination of this EULA for a party to assert its rights and receive the protections of this EULA, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply. The parties are independent contractors with respect to each other.



**10.8 Export Control Laws.** End User will not import, export, re-export, or transfer, directly or indirectly, any part of the Services or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

**10.9 Notices.** Unless otherwise agreed to by the Parties, all notices required under this EULA (except those relating to product pricing, changes and upgrades) will be deemed effective when received and made in writing by either (a) registered mail, (b) certified mail, return receipt requested, or (c) overnight mail, addressed and sent to the address in the beginning of this EULA.

The Parties have caused this EULA to be executed by their duly authorized representatives as of the Effective Date above.

| INNOVAPPTIVE INC.<br>( Innovapptive ) | _____<br>(End User) |
|---------------------------------------|---------------------|
| Signature:                            | Signature:          |
| Printed Name: Ted Stiefel             | Printed Name:       |
| Title: Director of Finance            | Title:              |
| Date:                                 | Date:               |



## EXHIBIT A SUPPORT & MAINTENANCE TERMS

**Commented [SJ1]:** Yala and Perry – What portion of this is applicable? I assume we'd still provide technical support for the licenses. Please let me know so I can finish this up.

**1. Support & Maintenance.** The terms in this Exhibit A apply to all warranty and support services provided by Innovapptive to End User under the EULA ("Support Services"). Support Services consist of 3 major functions: (a) Technical Support; (b) Maintenance Services; and (c) Service Level Agreement. Unless otherwise specified in the applicable SOW, the standard support period ("Support Period") will be one year. Innovapptive will provide Support Services for those components of the CWP Solution made generally available and licensed under this EULA. Innovapptive reserves the right to change the terms of the Support Services on 60 days' prior written notice to End User.

**2. Technical Support.** To be eligible for Support Services, the hardware and software used with the CWP Solution must meet Innovapptive's minimum configuration requirements provided in the Documentation. Innovapptive will provide the following technical support services:

- Communication with technical support is initiated one (1) to two (2) weeks prior to "Go-Live" for the CWP Solution.
- Users may contact technical support via the support website, email or telephone.
- Live support 9:00 AM to 5:00 PM Central Time Monday through Friday, excluding holidays
- Critical issues: 24 X 7
- Help Desk Tickets: <https://helpdesk.innovapptive.com/support/tickets/new>
- Website: <https://helpdesk.innovapptive.com/support>
- Phone: 1.844.464.6668 – option #2

**2.1 Named Contacts.** End User will designate personnel who are trained and knowledgeable about the CWP Solution and who are responsible for contacting Innovapptive for Support Services. The quantity and name of the End User's "Named Contacts" will be indicated on each SOW and/or Order. Any change of a Named Contact must be submitted by End User to Innovapptive in writing.

**2.2 Cooperation.** End User must (a) promptly notify Innovapptive when the CWP Solution fails to conform and provide Innovapptive with sufficient details of the failure such that the failure can be reproduced by Innovapptive; (b) allow Innovapptive remote access to the CWP Solution to provide Support Services; and (c) furnish information and assistance requested by Innovapptive to assist it in providing Support Services.

**2.3 Help Desk Tickets.** End User may initiate a "Help Desk Ticket" submitted through an online portal - 7 days a week, 24 hours a day, at the webpage specified in Section 2 above. When a new Help Desk Ticket is received, Innovapptive will label it with a severity level. Issues will be processed according to severity and then in the order that the incident was reported. The severity list and response time commitments are listed in Section 2.5 below.

**2.4 Technical Support Scope.** Standard Technical Support does not extend to End User requests (a) for assistance to update End User's product data, workflow rules or reports, (b) to support or write custom code (c) for data management, or (d) any other assistance not directly related to a defect or product enhancement of the SaaS Services.



## 2.5 Severity Definitions & Course of Action.

| Severity Priority | Severity Description  | Response  |
|-------------------|---|---|
| <b>Urgent</b>     | Critical Situation/System Down. Mission critical business service is not operational. Usually applies to production environment. Critical interface has failed. | Production impacting issues are worked upon continuously until a solution or an acceptable workaround is provided.  |
| <b>High</b>       | Severe Impact: A software component is severely restricted in its use, causing significant business impact.   | Production impacting issues are worked upon continuously during the regular office working hours. Innovapptive End User Support staff will work with the product development team to identify the solution and/or an acceptable workaround. The software changes needed for the fix can be delivered either as a hotfix, support pack or a maintenance release depending on the nature of the issue. These fixes would also be available and included in the scope of the forthcoming major/minor releases. |
| <b>Medium</b>     | Moderate Impact: A non- critical software component is malfunctioning, causing moderate business impact.  | Production impacting issues are worked upon continuously during the regular office working hours. Innovapptive End User support team will work with the product development team to identify the solution and/or an acceptable workaround. The software changes needed for the fix can be delivered either as a hotfix, support pack or a maintenance release depending on the nature of the issue. These fixes would also be available and included in the scope of the forthcoming major/minor releases.  |
| <b>Low</b>        | Minimal Impact: A non- critical software component is malfunctioning, causing minimal impact or a non- technical request is made.                               | Production impacting issues are worked upon continuously during the regular office working hours. Innovapptive End User support team will work with the product development team to identify the solution and/or an acceptable workaround. The software changes needed for the fix can be delivered either as a hotfix, support pack or a maintenance release depending on the nature of the issue. These fixes would also be available and included in the scope of the forthcoming major/minor releases.  |

**3. Maintenance Services.** Innovapptive will provide all Releases for the CWP Solution licensed by End User under the EULA provided that End User has paid the associated Support Services fees, if any. Innovapptive will provide Support Services on an (n) and (n-1) basis, where (n) represents the most recent Major Release. Support Services will cease for versions older than (n-1) or twelve (12) months, whichever is longer. Innovapptive will not provide Maintenance Releases for (n-1) Releases but will provide Hot Fixes where necessary.

**4. Service Level Agreement ("SLA").** Please note that the following turnaround time for SLA's are subjected to the completeness of information available regarding the issue reported and availability of support from the End User. End User IT and Business Support teams will support the prompt and timely determination of the root cause and implementation of the solution and fixes as provided by the Innovapptive End User support team.

**4.1 Help Desk Ticket Response Times.** Depending upon the severity level assigned to a particular Help Desk Ticket, Innovapptive will respond in accordance with the following:

| Priority      | Initial Response Time (from Ticket Creation) | Workaround Time  | Solution   |
|---------------|--|------------------|--|
| <b>Urgent</b> | 2 business hours                             | 8 business hours | 80 business hours for the latest Service Pack or Version             |
| <b>High</b>   | 4 business hours                             | 2 business days  | If a Software revision is required, the next Service Pack or Version |
| <b>Medium</b> | 1 business day                               | 4 business days  | If a Software revision is required, a future Service Pack or Version |





|     |                 |                 |  |
|-----|-----------------|-----------------|--|
| Low | 2 business days | 8 business days | If a Software revision is required, a future Service Pack or Version |
|-----|-----------------|-----------------|--|

#### 4.2 System Availability.

(a) Innovapptive will provide 99.5% monthly availability for the SaaS Services (“**Availability Warranty**”). The term “Availability” will mean that the SaaS Services are available and working without material functional degradation, and that application response time performance allows for commercially reasonable productive use of the SaaS Services. Availability will be measured at the point where the SaaS Services are made available on the Internet from Innovapptive’s hosted data center(s), and does not include outages caused by the End User, Users or by third-party Internet transport providers. Availability measures will be exclusive of pre-scheduled maintenance periods, about which End User received commercially reasonable prior written notification, and which are of commercially reasonable frequency and duration.

(b) If Company fails to meet the Availability in any given month, Innovapptive will provide End User a credit against the immediate subsequent billing period’s total bill or, if no further billing periods remain, a pro-rata refund of any prepaid fees, according to the following schedule:

| Credit Percentage | Monthly Availability - Actual |
|-------------------|-------------------------------|
| 5%                | 99.00% - 99.49%               |
| 10%               | 96.00% - 98.99%               |
| 15%               | 94.00% - 95.99%               |
| 20%               | 90.00% - 93.99%               |
| 25%               | < 90.00%                      |

End User incident’s status will be monitored by Innovapptive’s technical support management on a regular basis.

#### 5. Limitations. Support Services do not include or cover services that becomes necessary due to:

- the availability of the web service interface or application provided by any third party provider. End User recognizes that the SaaS Services may require data and session ids provided by third party provider. Any interruption of the SaaS Services caused by the unavailability of a third-party provider or any other third-party service or data is not the responsibility of Company and will not accrue against any SLA made herein.
- A malfunction of equipment or software not supplied or maintained by Innovapptive;
- Extensions to the Software involving custom or User-specific code (whether created by Company or End User);
- Software configuration;
- Code required to feed data to Software (feed-related code);
- Project management and training;
- A failure of hardware, equipment or programs not covered by the EULA;
- Use of software not obtained from Innovapptive under the EULA;
- Beta versions of the Software;
- Use in a production environment of any implementation or non-production release of the Software;
- Any cause or causes beyond the reasonable control of Innovapptive (e.g. floods, fires, loss of electricity or other utilities), errors arising from anything other than the Software, such as databases, web-servers or hardware;
- Users’ or End User’s failure to comply with operating instructions contained in the Documentation;
- Any modification, enhancement or customization of the Software made by anyone other than Innovapptive or its representatives;
- Interfaces, web services or data formats other than those included with the Software;
- Any third-party products except to the extent that they are provided by Innovapptive, and then only in support of the specific interface or functionality that is intended by Innovapptive.