

This Master Agreement (this “**Master Agreement**”) is entered into as of the last signature date specified below (the “**Effective Date**”) by and between Invafresh Inc., a corporation formed under the laws of Delaware, with its principal offices at 1177 Avenue of the Americas, 5th Floor, New York, NY 10036, USA (“**Invafresh**”) and the party identified as the Customer below (“**Customer**”). Customer’s access to and use of the Invafresh Software specified in each Order Form mutually entered into hereunder are subject to all terms and conditions in this Agreement and all Exhibits hereto.

1. **DEFINITIONS**

“**Access**” means the ability of the Customer to access the Invafresh Software either by login credentials for SaaS Services or delivery of the Invafresh Software for the On-Premise Deployment.

“**Access Date**” means the date upon which Invafresh first gives Customer or its consultants or advisors Access to the Invafresh Software.

“**Affiliate**” of a party means (i) an individual, corporation or other entity that, directly or indirectly, controls or is controlled by such party, and (ii) a corporation or other entity that is directly or indirectly controlled by the same individual, corporation or entity that directly or indirectly controls such party. An individual, corporation or other entity controls another if it holds voting securities of, or other ownership interests in, such other corporation or entity to which are attached more than 50% of the votes that may be cast for the election of directors of such other corporation or entity.

“**Agreement**” means this Master Agreement, including all applicable Exhibits, Orders, Statements of Work and Schedules when attached hereto.

“**Confidential Information**” means any information of a party, its Affiliates or licensors that is disclosed to the other party or its Affiliates under this Agreement and that is designated in writing as confidential or that a reasonable party would understand to be confidential, by the nature of the information or the circumstances in which it is disclosed. Notwithstanding the foregoing, Confidential Information does not include information that: (i) the Receiving Party independently develops without reference to the Disclosing Party’s Confidential Information; (ii) is or becomes public knowledge through no fault of the Receiving Party; (iii) the Receiving Party already knows at the time the Receiving Party receives the Confidential Information from the Disclosing Party; or (iv) the Receiving Party receives from a third party not subject to confidentiality obligations. The Invafresh Software and Documentation are Confidential Information of Invafresh.

“**Customer Trademarks**” means Customer’s design logos, product names, trademarks and/or trade names.

“**Customer Data**” means all information, data, materials, and trademarks provided by Customer to Invafresh hereunder, and, if applicable, any Customer Data that has been processed as part of the SaaS Services (as defined below)

“**Deliverables**” means any report, document, template, study, operating model, technical architecture, system, specification, requirement, software documentation, abstract, summary, manual, formula, chart, design, drawing, graphic, plan, rule, data, information, Training Materials, or other item or material that Invafresh has agreed to deliver to Customer pursuant to a Statement of Work and is identified in such Statement of Work as an Deliverable.

“**Derivative Work**” means a work that is based on or incorporates code or other intellectual property from a party’s pre-existing intellectual property and that, if created without a license from such party, would infringe such party’s intellectual property rights.

“**Disclosing Party**” means, with respect to any Confidential Information, the party disclosing such Confidential Information.

“**Documentation**” means the software product user guides, manuals, and other documentation for the Invafresh Software that Invafresh generally makes available to customers of the Invafresh Software, and includes updates thereto provided from time to time at the discretion of Invafresh.

“**Effective Date**” means the date identified as such in the Order or SOW.

“**Fees**” means any fees outlined in the Order or Statement of Work, as applicable.

“**Invafresh Software**” means the Invafresh software programs described in the Order (including any related Invafresh application programming interfaces), together with the Documentation.

“**Invafresh Trademarks**” means Invafresh’s design logos, product names, trademarks and/or trade names.

“**On-Premise Deployment**” means permitting Access to the Invafresh Software that is hosted by or on behalf of Customer via an on premise deployment model as further described in Exhibit A-2.

“**Order**” means any order for an On-Premise Deployment or for SaaS Services that references this Agreement and is executed by both Parties.

“**Personally Identifiable Information**” means any information that refers, is related to, or is associated with an identified or identifiable individual, including, but not limited to, an individual’s first name or first initial and his or her last name in combination with any one or more of the following data elements: (a) social security or social insurance number, (b) driver’s license number or provincial/state identification card number, (c) account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account or (d) any individually identifiable information regarding an individual’s medical history or medical treatment or diagnosis by a health care professional.

“**Production Environment/PE**” means an environment that is utilized for live business activities supported by the Invafresh Software.

“**Program Error**” means error, accessibility problem or other issue related to the On-Premise Deployment or the SaaS Services, as the case may be.

“**Professional Services**” means the services that Invafresh agrees to perform pursuant to a Statement of Work.

“**Program Change Request**” or “**PCR**” means a request to amend a Statement of Work, as described in Section 4.6.

“**Receiving Party**” means, with respect to any Confidential Information, the party receiving such Confidential Information.

“**Regular Business Hours**” means 8:00 am to 5:00 pm, (in the Time Zone) Monday to Friday (other than holidays observed in Time Zone)

“**SaaS Services**” means permitting Access to the Invafresh Software via a software as a service deployment model as further described in Exhibit A-1.

“**Statement of Work**” or “**SOW**” means a statement of work that sets out specific Professional Services to be provided by Invafresh to Customer and the terms and conditions applicable thereto. Each Statement of Work shall (i) form a separate contract between Invafresh and Customer; (ii) be substantially in the format attached hereto as Exhibit B, except as otherwise agreed; (iii) incorporate the terms of this Master Agreement, except to the extent that the Statement of Work specifies sections of this Master Agreement that, for the purposes of such Statement of Work only, are overridden by such Statement of Work; and (iv) be executed by Invafresh and Customer. A Statement of Work includes any amendments thereto made by way of Program Change Requests.

“**Subscription Fees**” means the fees payable by Customer for the rights granted hereunder, as set out in Order.

“**Supported Version**” means the then-current version and the one previous version of the Invafresh Software. For greater certainty, a change in the number to the left of the decimal point in the product release number indicates a new version.

“**System**” means, collectively, the Invafresh Software and other software, hardware, websites and services hosted and/or used by Invafresh to provide Access to the Invafresh Software by Customer.

“**Term**” has the meaning ascribed to such term in Section 6.1.

“**Time Zone**” means Eastern Time (“ET”).

“**Training Materials**” means any training, course collateral or other items or materials supplied by Invafresh as part of a training offering.

“**Trademarks**” mean the Invafresh Trademarks or Customer Trademarks or both, as the context requires.

“**Usage Data**” means technical and related information about Customer’s use of the Invafresh Software or SaaS Services, the platform environment and configuration details.

2. **RIGHTS GRANTED**

2.1 Invafresh Software. Subject to the terms and conditions of this Agreement, Invafresh, during the Term, grants to Customer a non-exclusive, non-transferable, non-sublicensable right to Access and use the Invafresh Software (as described in the Order) for its internal business purpose.

2.2 Restrictions on Access. Customer shall not itself, and shall not authorize or enable a third party to:

- a) use the Invafresh Software on behalf of any third party as a service bureau, or on a “software as a service” basis, or otherwise;
- b) use, reproduce, modify, lease, rent, permit concurrent use of, or distribute the Invafresh Software other than as expressly permitted in this Agreement;
- c) offer the Invafresh Software for resale to any third party;
- d) make the Invafresh Software available to third parties;
- e) disassemble the Invafresh Software or unbundle any software it contains;
- f) prepare or create Derivative Works of the Invafresh Software;
- g) reverse engineer, decompile, or otherwise derive the source code of the Invafresh Software; or
- h) remove or modify any proprietary notices from the Invafresh Software.

3. **ACCESS AND INSTALLATION**

3.1 Access. Invafresh will give Customer Access to the Invafresh Software, on the System for the Term. Where Access is granted via a SaaS Services Deployment, the additional terms set forth in Exhibit A-1 shall apply. Where Access is granted via an On-Premise Deployment, the additional terms set forth in Exhibit A-2 shall apply.

4. **PROVISION OF PROFESSIONAL SERVICES**

4.1 Statement of Work. Prior to the commencement of a particular engagement for Professional Services, the parties will agree on a written Statement of Work for such engagement. Invafresh or any of its Affiliates may perform the Professional Services set forth in a Statement of Work in accordance with the terms of this Agreement and such Statement of Work.

4.2 Personnel & Facilities. At Customer’s request, Invafresh will provide personnel to develop the Statement of Work for the engagement, at Invafresh’s then-current standard rates. Except as otherwise provided in a Statement of Work, Professional Services may be performed by such Invafresh personnel as Invafresh may, in its sole discretion, assign. Invafresh may reassign or remove personnel from an engagement under this Agreement without the prior written consent of Customer, provided Invafresh will replace such personnel with individuals competent to perform the role.

Customer will make available the resources and facilities set out or described in each Statement of Work, at Customer’s cost. Invafresh will use the facilities provided by Customer for purposes of performing the Professional Services and not for personal use.

- 4.3 Customer's Obligations.** In addition to performing Customer's obligations as set out in a Statement of Work, Customer shall:
- secure for Invafresh all rights and access to any software, hardware, and other products as are necessary to enable Invafresh to perform the Professional Services in accordance with the Statement of Work; and
 - ensure that Customer's personnel have the appropriate and requisite skills, experience and training for the engagement, including without limitation that such personnel have attended appropriate Invafresh training courses.

4.4 Timely Performance. Customer acknowledges and agrees that Invafresh's ability to timely perform the Professional Services depends upon Customer's timely performance of its obligations under this Agreement and as stated in the relevant Statement of Work, including without limitation the delivery of any materials or information specified in such Statement of Work. Customer acknowledges that, if it does not timely perform its obligations or the review and sign-off of key documents, then at Invafresh's sole discretion, it shall either (a) provide a Program Change Request to Customer to amend a Statement of Work, including without limitation the Professional Services to be provided, Deliverables to be delivered, fees to be paid or schedule thereunder, or (b) be relieved of any commitments to perform Professional Services as scheduled.

4.5 Project Co-ordinator. Each of the parties shall appoint a project co-ordinator for each Statement of Work, who shall be the primary point of contact for such party with respect to such Statement of Work. The project co-ordinators will be responsible for coordinating and planning all meetings, collaborations and/or discussions.

4.6 Program Change Requests. Either party may, at any time, seek to amend a Statement of Work, including without limitation the Professional Services to be provided, Deliverables to be delivered, fees to be paid or schedule thereunder, by delivering to the other party a Program Change Request. No Program Change Request shall be effective until it has been executed by both parties, whereupon it shall amend the relevant Statement of Work.

5. FEES & PAYMENTS

5.1 Payments. Customer shall pay the Subscription Fees, in accordance with the terms and conditions and payment schedules described in the Order. Subscription Fees are non-refundable and non-cancellable.

5.2 Professional Services Payments. Invafresh will issue to Customer monthly invoices, billing in arrears, due within thirty (30) days following the date of Invafresh's invoice, for any Fees calculated at Invafresh's then current services rates or as agreed in the applicable Statement of Work.

5.3 Expenses. Customer will reimburse Invafresh for all reasonable out-of-pocket expenses (including without limitation travel, meals and incidental expenses) incurred by Invafresh under an Order or Statement of Work. Any such expenses shall be approved by Customer in advance of the expense being incurred. Reasonable supporting documentation for expenses charged to Customer will be provided by Invafresh upon request.

5.4 Purchase Orders. If Customer's internal payment processes require the issue of a purchase order, Customer shall, in a timely manner, email purchase orders required to make all payments in accordance with this Agreement to orders@Invafresh.com or such other email address as Invafresh may designate in writing from time to time. Any terms and conditions of such purchase order that are inconsistent with any quotes issued by Invafresh or contrary to the terms and conditions of this Agreement shall be of no effect. Customer's failure to issue a purchase order shall not relieve it of any obligations under this Agreement.

5.5 Taxes. All amounts set out or referred to in this Agreement are exclusive of all taxes, duties and levies, however designated or computed. Customer will pay all applicable taxes, duties, and levies, including without limitation sales, use, or value-added taxes and withholding taxes, based upon or payable in respect of this Agreement, the transactions, uses, licenses, products or services provided for hereunder or the payments made hereunder, excluding any taxes based upon Invafresh's net income.

If Customer is required to deduct withholding tax from payments to Invafresh in accordance with applicable law or if Customer is exempt from sales tax, Customer shall promptly send to Invafresh the official tax certificate certifying such withholding tax deduction or any such exemption.

5.6 Currency and Late Payments. Any amount described in this Section that remains unpaid after the due date is subject to a late charge calculated at the rate of 1.5% per month, or the maximum rate allowed by law, whichever is less, from the due date until such amount is paid. All amounts described in this Section 5 shall be paid to Invafresh in the currency specified in an Order, or as specified in the applicable Statement of Work.

6. TERM AND TERMINATION

6.1 Term. This Agreement will commence on the Effective Date and will continue in force and effect for the period set out in the Order (the "Term"), unless terminated earlier as provided in this Agreement. Unless terminated earlier in accordance with its terms, all Statements of Work shall be automatically terminated upon termination or expiry of this Agreement.

6.2 Renewal. This Agreement shall automatically renew for successive one-year terms unless either party provides written notice of its intent not to renew at least 30 days prior to the expiration of the then-current term.

6.3 Termination for Customer's Default. Invafresh may terminate this Agreement, by written notice to Customer, in the event Customer:

- breaches its obligations under Section 2.2 (Restrictions on Use) or Section 9 (Confidentiality);
- materially breaches any other term of this Agreement and fails to cure such breach within thirty (30) days following written notice from Invafresh;
- admits in writing its inability to pay its debts as they become due, applies for or consents to the appointment of a trustee, receiver, or other custodian, makes a general assignment for the benefit of its creditors, or initiates any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law; or
- becomes subject to any bankruptcy, dissolution or liquidation proceedings which are not dismissed or resolved within one-hundred twenty (120) days.

6.4 Service Suspension and Access Restriction. Invafresh may suspend or restrict Customer's Access, or its provision of the Professional Services (in whole or in part) (the "Suspension Period") if any of the following conditions exist (the "Suspension Conditions"):

- a) any time after the 30th day after the due date of any invoice in the event that Customer has not paid the subject invoice in full;
- b) at any time if InvaFresh's operations are impaired by Customer's use of the InvaFresh Software or Professional Service(s);
- c) if Customer has breached this Agreement or any Statement of Work, which breach has not been remedied within ten (10) business days of receipt of notice by InvaFresh.

Notwithstanding any suspension as detailed above, Customer shall remain liable for payment of all invoices through the entire Suspension Period. Regardless if InvaFresh suspends services, during any time period in which a Suspension Condition exists, all incidents that give rise to provision of a warranty or indemnity, including, without limitation, under Section 7 and Section 8 will not be considered as events under such paragraphs, including claims and warranty events. In addition, InvaFresh may, in its sole discretion, charge a reconnection fee to Customer at the end of the Suspension Period.

6.5 Termination for InvaFresh's Default. Customer may terminate this Agreement by written notice to InvaFresh, in the event InvaFresh:

- a) breaches its obligations under Section 9 (Confidentiality);
- b) materially breaches any other term of this Agreement and fails to cure such breach within thirty (30) days following written notice from Customer;
- c) admits in writing its inability to pay its debts as they become due, applies for or consents to the appointment of a trustee, receiver, or other custodian, makes a general assignment for the benefit of its creditors, or initiates any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law; or
- d) becomes subject to any bankruptcy, dissolution or liquidation proceedings which are not dismissed or resolved within one-hundred twenty (120) days.

6.6 Effects of Expiration or Termination of Agreement. Upon expiration or termination of this Agreement, for any reason whatsoever:

- a) Customer will pay all outstanding invoices in accordance with Section 5. In addition, InvaFresh will invoice Customer for all licenses and Access to the System granted hereunder, and/or services provided, on or before the date such termination is effective, and Customer shall pay such invoices in accordance with Section 5;
- b) all Access to the System granted to Customer hereunder shall terminate;
- c) Customer will promptly cease using the InvaFresh Software; and
- d) Customer will promptly destroy (or return if requested by InvaFresh) all materials and Access rights furnished to Customer by InvaFresh hereunder in Customer's possession or control and, if requested by InvaFresh, provide a certificate stating that Customer has done so, signed by an officer of Customer.

6.7 Termination of Statement of Work for Default. The other party may terminate a Statement of Work, by written notice, in the event either party:

- a) breaches its obligations under Section 9 (Confidentiality) in the performance of a Statement of Work; or
- b) materially breaches any other term of a Statement of Work and fails to cure such breach within thirty (30) days following written notice from the other party.

6.8 Effects of Expiration or Termination of Statement of Work. Upon expiration or termination of a Statement of Work, for any reason whatsoever:

- a) Customer will pay all outstanding invoices in accordance with Section 5.2. In addition, InvaFresh will invoice Customer for all Professional Services provided, on or before the date such termination is effective at the rates for such Professional Services provided for in the relevant Statement of Work, and Customer shall pay such invoice in accordance with Section 5.2; and
- b) Subject to any terms or conditions of the Statement of Work, InvaFresh shall have no obligation to provide further Professional Services under such Statement of Work, or any other Statement of Work pursuant to which the Professional Services provided under such terminated Statement of Work are required.

6.9 Other Remedies and Consequences. The termination or expiration of this Agreement, any Statement of Work, or any Access right granted hereunder does not prevent or limit either party from pursuing any other remedy or remedies available to it at law or equity, including without limitation injunctive relief, nor does such termination or expiration relieve Customer of any remaining obligation hereunder to pay amounts that are due to and payable to InvaFresh.

6.10 Survival. Sections 2.2 (Restrictions on Access), 5 (Fees & Payments), 6.5 (Effects of Expiration or Termination of Agreement), 6.7 (Effects of Expiration or Termination of Statement of Work), 6.8 (Other Remedies and Consequences), 7 (Indemnity), 8.2 (Disclaimers), 9 (Confidentiality), 10 (Proprietary Rights), 11 (Trademarks), 12 (Limitation of Liability), and 13 (General Provisions) will survive any termination or expiration of this Agreement.

7. INDEMNITY

7.1 Intellectual Property. Subject to Section 7.2, InvaFresh will: (a) defend Customer and each of its employees, directors, officers, successors, and permitted assigns ("Customer Indemnitee") against any claim or lawsuit by a third party (a "Claim") to the extent such Claim arises from or is related to an IP Claim (defined below) and (b) indemnify each Customer Indemnitee from and against any damages, losses, and liabilities ("Damages") that are: (i) awarded in any final judgment entered by a court or body of competent jurisdiction over any such Claim that is not subject to further appeal; or (ii) agreed to be paid by InvaFresh (in its sole discretion) in any settlement of any such Claim. As used herein, an "IP Claim" means any Claim based on an assertion that the SaaS Services, On-Premise Deployment, Professional Services or Deliverables infringe a Canadian or US patent, North American trademark, or North American copyright or misappropriate a trade secrets. InvaFresh's obligations under this Section 7.1 are subject to the conditions that Customer (i) notifies InvaFresh in writing of any such claim promptly upon learning of it (provided InvaFresh's indemnification obligations hereunder shall only be lessened to the extent Customer's failure to provide such notice materially impacts InvaFresh's ability to defend against such claim) and allows InvaFresh to have sole control of the defense, and all related settlement negotiations, and (ii) cooperates with InvaFresh, at InvaFresh's expense, in defending or settling the claim. InvaFresh has no obligation with respect to any settlement, payment or admission made, or cost or expense incurred, without InvaFresh's prior written consent. This Section 7.1 states InvaFresh's entire liability and Customer's exclusive remedy for infringement claims, actions, suits, and proceedings relating to the subject matter of this Agreement.

7.2 Exceptions. InvaFresh will have no liability for any claim or allegation that is based upon:

- a) use of a version of the InvaFresh Software that is not a Supported Version;
- b) any use of the SaaS Services, Professional Services, a Deliverable, the InvaFresh Software or any part thereof in combination with other products, equipment, software, systems, services or data not supplied, recommended or approved by InvaFresh;

- c) Services, Professional Services, Deliverable, or InvaFresh Software that has been modified, compiled or integrated by InvaFresh in accordance with the Customer's provided specifications or instructions; or
- d) any modification of the Deliverable or InvaFresh Software that was not made by InvaFresh.

InvaFresh will not be liable for damage, loss, or other liability to the extent the same falls within the scope of liability for which Customer is responsible under Section 7.4.

7.3 Mitigation. Without abrogating InvaFresh's indemnification obligations set forth herein, if the SaaS Services, On Premise Deployment, Professional Services, Deliverables, InvaFresh Software or any portion or component thereof is held or is believed by InvaFresh to infringe upon a third party's rights, InvaFresh may, at its option and expense:

- a) obtain a license to continue using such item; or
- b) replace or modify the SaaS Services, Deliverables or part, or InvaFresh Software so that it becomes non-infringing; or
- c) if neither of the foregoing alternatives is reasonably available, remove the infringing item, cease to provide the infringing Service, terminate Customer's license to use such item and refund to Customer an equitable portion of the Fees to reflect the benefit that Customer received from such infringing item within the previous twelve (12) months paid by Customer therefor.

7.4 Indemnification by Customer. Customer will defend or settle any claim brought or allegation made against InvaFresh or a InvaFresh Affiliate by a third party (i) arising out of the combination, operation or use of the SaaS Services, On-Premise Deployment, Professional Services or Deliverables with any other item or in breach of this Agreement, (ii) arising out of the overlaying or other modifications by Customer of third-party content; (iii) based on use of SaaS Services, On-Premise Deployment or Deliverables, by or on behalf of Customer after InvaFresh has notified Customer that such activities may constitute an infringement of the intellectual property rights of a third party, (iv) arising out of or in connection with Customer Data. Customer's obligations under this Section 7.4 are subject to the conditions that InvaFresh (a) notifies Customer in writing of any such claim promptly upon learning of it (provided Customer's indemnification obligations hereunder shall only be lessened to the extent InvaFresh's failure to provide such notice materially impacts Customer's ability to defend against such claim) and allows Customer to have sole control of the defense and all related settlement negotiations, and (b) cooperates with Customer, at Customer's expense, in defending or settling the claim. Customer has no obligation with respect to any settlement, payment or admission made, or cost or expense incurred, without Customer's prior written consent.

8. WARRANTIES AND DISCLAIMERS

8.1 Warranties. InvaFresh warrants to Customer that: (a) InvaFresh has the right to grant the Access rights granted in this Agreement on the terms and conditions set forth herein; and (b) InvaFresh warrants that the Professional Services will be performed in a professional and workmanlike manner by persons with adequate skill, training and expertise.

8.2 Disclaimers. THE WARRANTIES SET FORTH IN SECTION 8.1 ARE THE ONLY WARRANTIES PROVIDED BY INVAFRESH FOR THE INVAFRESH SOFTWARE AND/OR PROFESSIONAL SERVICES AND/OR SAAS SERVICES. TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, INVAFRESH DISCLAIMS, ON BEHALF OF ITSELF AND ITS LICENSORS AND INVAFRESH AFFILIATES, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OR CONDITIONS (i) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE, NON-INFRINGEMENT, OR SUCCESSFUL SYSTEM INTEGRATION, (ii) THAT THE INVAFRESH SOFTWARE ARE ERROR-FREE, (iii) THAT OPERATION OF THE INVAFRESH SOFTWARE WILL BE SECURE OR UNINTERRUPTED, OR (iv) THAT THE INVAFRESH SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS. NEITHER INVAFRESH, NOR ITS AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES MADE TO END USERS CONCERNING THE INVAFRESH SOFTWARE PROVIDED TO CUSTOMER.

EXCEPT AS STATED IN SECTION 8.1, ALL PROFESSIONAL SERVICES AND DELIVERABLES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, BY STATUTE OR OTHERWISE OR FROM A COURSE OF DEALING OR USAGE OF TRADE. EXCEPT THE WARRANTIES EXPRESSLY SET OUT IN SECTION 8.1, INVAFRESH HEREBY DISCLAIMS AND EXCLUDES ALL WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE FULLEST EXTENT PERMITTED BY LAW.

9. CONFIDENTIALITY

The Receiving Party will use the Confidential Information of the Disclosing Party only to perform its obligations or exercise its rights under this Agreement or a Statement of Work.

The Receiving Party will not directly or indirectly disclose or make the Disclosing Party's Confidential Information available to any other party, except that the Receiving Party may disclose the Disclosing Party's Confidential Information to such of the Receiving Party's Affiliates, and to such of its and its Affiliates' employees, professional advisers and in InvaFresh's case, independent contractors, who need it for the purposes set out in this Agreement and are legally bound to maintain the confidentiality of such Confidential Information. The Receiving Party shall be liable for any unauthorized use or disclosure of the Disclosing Party's Confidential Information by any person to whom the Receiving Party has disclosed such Confidential Information. Notwithstanding any provision in this Agreement, the Receiving Party will not disclose Confidential Information of the Disclosing Party to any of the Disclosing Party's competitors.

The Receiving Party will protect the Confidential Information of the Disclosing Party with at least the same degree of care that it uses to protect its own information of similar confidentiality and value (but in any event, not less than a reasonable degree of care). The Receiving Party will notify the Disclosing Party in writing of any unauthorized use or disclosure of the Disclosing Party's Confidential Information of which the Receiving Party becomes aware, and assist the Disclosing Party in remedying such unauthorized use or disclosure.

Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information when required to do so by law, judicial body

or government agency. Unless otherwise prohibited by law, the Receiving Party will give prompt, written notice, when possible, of any legal requirement that it disclose Confidential Information, and will disclose Confidential Information only to the extent required by law. The Receiving Party will also use reasonable efforts to help the Disclosing Party prevent such disclosure of the Confidential Information and to help obtain confidential treatment therefor.

The Receiving Party acknowledges that any breach of this Section 9 may cause irreparable harm to the Disclosing Party for which monetary damages are an inadequate remedy. The Disclosing Party may, in the discretion of the court, seek an injunction or other equitable relief to restrain any such breach or the continuation thereof without showing or proving that the Disclosing Party has sustained, or will sustain, actual damage.

10. PROPRIETARY RIGHTS

10.1 Invafresh Software. Invafresh and its third-party licensors retain all rights, including intellectual property rights and registrations, to the Invafresh Software, the Usage Data and Invafresh's Confidential Information. Customer will not acquire any rights, including without limitation intellectual property rights and registrations, in the Invafresh Software, the Usage Data or Invafresh's Confidential Information under this Agreement. Customer acknowledges and agrees that no Deliverable shall be considered to be part of the Invafresh Software or the SaaS Services unless Invafresh, in its sole discretion, makes such Deliverable generally commercially available.

10.2 Deliverables. Except as may otherwise be set forth in a Statement of Work, and subject to Section 10.1, Invafresh shall hold all rights, title and interest to the Deliverables. Invafresh hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use each Deliverable only with Invafresh Software for internal business purposes. Each such license shall commence on delivery of the Deliverable to Customer and shall automatically terminate on expiry or termination of Customer's license or Access right to the Invafresh Software with which such Deliverable is intended to be used. Each such license shall be subject to the same restrictions as apply to Customer's license to use the relevant Invafresh Software.

10.3 Invafresh Trademarks. Nothing in this Agreement transfers any ownership rights in the System or Invafresh Trademarks, including without limitation intellectual property rights and registrations, to Customer. Customer acquires no right, title or interest in any such materials other than the licenses granted hereunder.

10.4 Customer Data and Trademarks. Customer retains all rights, including without limitation intellectual property rights and registrations, in and to all Customer Data and Customer Trademarks. Invafresh acquires no right, title or interest in any such materials other than the right to use Customer Trademarks granted hereunder.

Customer hereby grants to Invafresh a non-exclusive, worldwide, fully paid up, royalty-free license to, during the Subscription Term, use, reproduce, display, distribute, publish, perform, create derivative works from, process, transmit, provide, and store the Customer Data for the purpose of providing the SaaS Services. Notwithstanding the foregoing, Customer agrees that Invafresh may: (a) collect, use, and store the Customer Data and Usage Data to improve the SaaS Services, support and troubleshoot issues, analyze trends and enforce its right hereunder; or (b) compile or aggregate the Customer Data along with data of other Invafresh customers for business purposes (provided such aggregation or compilation is anonymized and omits any data or information that would enable identification of Customer, Customer's customers or any individual, company or organization).

10.5 Feedback. Customer grants to Invafresh and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, fully paid-up, license to use, copy, modify and distribute, without attribution, including by incorporating into any software or service owned by Invafresh any suggestion, enhancement request, recommendation, correction or other feedback (collectively, "**Feedback**") provided by Customer or users relating to any software or service owned or offered by Invafresh. For greater certainty, Customer has no obligation to provide any Feedback to Invafresh

11. TRADEMARKS

11.1 Trademarks. Each party grants to the other a non-transferable, non-exclusive, non-sublicensable, revocable worldwide license during the term of this Agreement to use the Trademarks on marketing and promotional materials related to the use of the Invafresh Software and on their website. Neither party shall use a Trademark except in accordance with the Trademark owner's prior written approval, which shall not be unreasonably conditioned, delayed or withheld. Neither party will use the other party's Trademarks or any other mark in a manner that is likely to cause confusion with such other party's Trademarks. All usage of a Trademark will inure to the benefit of the party owning such Trademark. Neither party will register the other party's Trademarks without such other party's prior written consent. Neither party will contest the ownership of the Trademarks of the other party. Each party will, at the request of the other party from time to time, supply a reasonable number of samples of all materials bearing any of such other party's Trademarks to confirm compliance with this Section. If either party notifies the other party in writing of any failure to comply with this Section within thirty (30) days of the receipt of such samples, such other party will suspend distribution and use of the materials that are not in compliance until the using party has satisfied the owning party that the foregoing requirements have been met. Customer will not use any Invafresh Trademarks in any way that implies that the Invafresh Software is the proprietary product of Customer or of any party other than Invafresh or its licensors

12. LIMITATION OF LIABILITY

12.1 Exclusion of Certain Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR A BREACH OF SECTIONS 2.2 (RESTRICTIONS ON USE), 7 (INDEMNITY) OR 9 (CONFIDENTIALITY), NONE OF INVAFRESH AND ITS AFFILIATES AND LICENSORS, OR CUSTOMER AND ITS AFFILIATES, WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY (i) LOSS OF PROFITS, BUSINESS OR DATA, (ii) INTERRUPTION OF ANY BUSINESS, OR (iii) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH IN THIS AGREEMENT.

12.2 Claims by Third Parties. NEITHER PARTY NOR ITS AFFILIATES WILL BE LIABLE FOR ANY CLAIM AGAINST THE OTHER PARTY BY ANY THIRD PARTY, EXCEPT AS PROVIDED IN SECTION 7, INDEMNITY.

12.3 Limit of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR (i) ANY PERSONAL

INJURY (INCLUDING DEATH) OR DAMAGE TO TANGIBLE, PERSONAL PROPERTY , (ii) INVAFRESH'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, OR (iii) INDEMNITY AS PER SECTION 7, THE TOTAL LIABILITY OF INVAFRESH FOR DAMAGES OR CLAIMS IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, OR ARISING OUT OF ANY STATEMENT OF WORK, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY USED, WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO INVAFRESH UNDER THIS AGREEMENT OR SUCH STATEMENT OF WORK IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE FIRST SUCH CLAIM AROSE.

12.4 Acknowledgement. The parties acknowledge that the terms and conditions of this Agreement, including without limitation the amount of Fees payable hereunder, are in consideration of the allocation of risks between Customer and InvaFresh and the limitations and exclusions of liability set out herein.

13. GENERAL PROVISIONS

13.1 Notices. All notices given under this Agreement shall be in writing, in English, and sent by email, nationally recognized overnight courier service or by registered or certified mail (return receipt requested) to the address of the recipient set out below (or to such other person or address as a party may designate by notice given in accordance herewith):

Notice to InvaFresh: InvaFresh Inc.
 1177 Avenue of the Americas, 5th Floor
 New York, NY 10036
 USA
 Attention: Legal Department
 Email: legal@invafresh.com

Notice to Customer: As set out in the Customer details above

Notices will be deemed to have been given when received.

13.2 Assignment. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Neither InvaFresh nor Customer may assign or otherwise transfer, whether by operation of law or otherwise, this Agreement or any portion thereof or any rights or obligations under this Agreement without the prior written consent of the other party. Consent will not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, either party may assign this Agreement, without consent, to a purchaser of all or substantially all of the assignor's assets, provided such assignee agrees in writing to assume and be bound by all of assignor's obligations under this Agreement.

13.3 Relationship of the Parties. The parties are independent contractors. This Agreement does not create any agency, partnership, joint venture, or employment relationship between the parties. Neither party nor its licensees or agents has any authority to bind the other.

13.4 Publicity. All press releases and other public announcements under this Agreement shall be approved by both parties in writing prior to release, which approval shall not be unreasonably withheld or delayed.

13.5 Governing Law; Consent to Jurisdiction.

If the Customer address referenced in the notice section of Agreement is located in the United States: (a) The Agreement will be governed by the laws of the state of Delaware, excluding its rules regarding conflicts of law; and (b) Venue for any dispute hereunder shall be a court of competent jurisdiction located in the state of Delaware and the parties irrevocably submit to the exclusive jurisdiction of such courts.

If the Customer address referenced in the notice section of Agreement is located in Canada or outside of the United States: (a) The Agreement will be governed by the laws of the province of Ontario, excluding its rules regarding conflicts of law; and (b) Venue for any dispute hereunder shall be a court of competent jurisdiction located in the Toronto, Ontario and the parties irrevocably submit to the exclusive jurisdiction of such courts.

Each of the parties hereto irrevocably waives, to the fullest extent it may effectively do so, any objection to the venue of any action, application or other proceeding arising out of or relating to this Agreement in the courts specified herein, including the objection that the proceedings have been brought in an inconvenient forum.

Each of the parties hereto hereby irrevocably and unconditionally consents to service of process regarding any action, application or other proceeding arising out of or relating to this Agreement in the manner provided for in Section 13.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

A final and non-appealable judgment in any such action, application or other proceeding arising out of or relating to this Agreement shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner specified by law.

13.6 English. This Agreement is in the English language only, which language is controlling in all respects, and no versions in any other language will be binding on the parties.

13.7 Compliance with Laws. Each of the parties will comply with all applicable laws and regulations. Without limitation, Customer will not import, export, or re-export, directly or indirectly, any InvaFresh Product to any country in violation of the laws and regulations of any applicable jurisdiction, including without limitation the United States of America. Customer represents and warrants that it is not required to obtain approvals from any governmental entity to execute this Agreement or to perform its obligations hereunder.

13.8 Customer Data Protection. InvaFresh shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Customer acknowledges and agrees that Customer Data will not include any Personally Identifiable Information and

furthermore Customer will not send and will not permit the sending on its behalf of Personally Identifiable Information in connection with the SaaS Services.

13.9 Severability & Waiver. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force, and the invalid or unenforceable provision will be deemed modified to the least extent necessary in order to be valid, legal and enforceable. The parties agree to immediately negotiate in good faith a replacement for any invalid or unenforceable provision in order to reflect the original intention of the parties. No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement will prejudice or restrict the rights of such party. No waiver by either party of any default or breach of this Agreement shall be binding unless the waiver is in writing. No such waiver shall operate as a waiver of any other or future default or breach.

13.10 Force Majeure. Neither party will be liable for failure or delay in the performance of its obligations, other than payment of money, due to strike, riot, fire, flood, communication line failures, power failures, pandemic, natural disaster, or other cause beyond such party's control, provided that such party gives prompt written notice of such condition to the other party and resumes its performance as soon as practicable. If either party's performance under this Agreement is delayed for one-hundred and eighty (180) days or more, the other party may terminate this Agreement.

13.11 Entire Agreement. This Agreement, including all Exhibits, Schedules and Statements of Work, constitutes the entire agreement between the parties concerning its subject matter, and supersedes all prior or contemporaneous agreements (including any previously executed confidentiality agreements and any letter agreements relating to the services and products described herein), discussions, negotiations and all past courses of dealing or industry custom. No modification or amendment of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each party. If any of the terms of this Agreement conflict with the terms in any Statement of Work, the terms of the Statement of Work govern.

13.12 Cumulative Remedies. Except as expressly indicated, no right or remedy conferred by this Agreement is exclusive of any other right or remedy available at law or in equity.

13.13 Interpretation. Section headings are for convenience only and shall not be deemed to be part of this Agreement. Use of the terms "hereunder", "herein", "hereby", and similar terms refer to this Agreement.

13.14 Insurance. InvaFresh will maintain appropriate levels and types of insurance from a reputable insurer commiserate with its obligations hereunder. Upon request by Customer, on an annual basis, InvaFresh will provide a copy of its then current certificate of insurance, as evidence of the foregoing.

13.15 Execution. This Agreement may be signed in counterparts, each of which will be deemed an original, but all of which together will constitute a single instrument. This Agreement may be delivered by facsimile transmission or other electronic means.

13.16 No Third-Party Beneficiaries. The parties agree that the terms of this Agreement and the parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each party under this Agreement only runs to the respective parties hereto, and that, except as expressly set out in the Agreement or a Statement of Work, no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

EXHIBIT A-1 - SAAS SERVICES TERMS**SAAS SERVICES TERMS**

The terms set out herein shall apply to SaaS Services only. If Customer has Access to Invaresh Software via On-Premise Deployment, the terms set out in Exhibit A-2 shall apply to such Access.

1. DEFINITIONS

As used herein, the following terms shall have the meaning set forth below:

“**Actual Availability**” means (Actual Uptime divided by the total number of minutes in the month) multiplied by 100.

“**Actual Uptime**” means the total number of minutes in a month minus Total Downtime that does not constitute Excluded Downtime.

“**Downtime**” means the time (in minutes) that the Invaresh Software is unavailable, other than Excluded Downtime.

“**Downtime Duration**” means, for each incidence of Downtime, the total number of minutes of Downtime where the SaaS Services is determined to be the root cause for the Downtime. For greater certainty, unavailability of Customer systems, network connectivity issues outside of the SaaS Services, and other similar events shall be excluded from Downtime Duration.

“**Excluded Downtime**” means downtime due to a Force Majeure Event, or Permitted Scheduled Maintenance.

“**Permitted Scheduled Maintenance**” means scheduled maintenance of the Invaresh Software during a Maintenance Window (as defined below) or a TDE Maintenance Window (as defined below).

“**Total Downtime**” means the sum of the Downtime Duration for all Downtime incidents in the applicable month. For example, assume that there are 30 days in the month (i.e., 43,200 minutes) and there are 50 minutes of Total Downtime, the Actual Uptime would be 43,150 minutes and the Actual Availability would be 99.88%.

2. SAAS SERVICES

2.1 SaaS Services. The Invaresh Software is provided as a SaaS Services, which includes System administration, System management, and System monitoring activities that Invaresh performs. As of the Access Date, subject to the terms and conditions of this Agreement and Exhibit, Invaresh shall provide Access to the Customer. Invaresh shall give the Customer Access to the Invaresh Software, as described below (each such environment a “Cloud Environment” and collectively, the “Cloud Environments”). The service level for each type of environment is described below.

2.2 Services. As part of SaaS Services, Invaresh shall:

- a) Provide all hardware and infrastructure internal to the SaaS Services, including but not limited to hardware, operating systems, file storage, firewalls, network, security, patching and deployment services.
- b) Provide Access to the Invaresh Software that meets the availability standard set out in Section 2.7 (the “Availability Standard”).
- c) Perform preventative maintenance of the Cloud Environments on a regular basis and as required by a third-party supplier.
- d) Invaresh shall provide release notes related to all regular change management activities in advance unless required by emergency maintenance, in which case the release notes will be made available soon thereafter.
- e) Provide Invaresh Software and data management and maintenance activities including but not limited to operating systems, database maintenance, back-ups, disaster recovery and Invaresh Software installation and product upgrades (not including any needed additional configuration).
- f) Provide remote connectivity for the Customer for the purposes of connectivity between systems in the Cloud Environments and those in the Customer premises, or elsewhere as directed by the Customer. Unless otherwise specified, the method of connectivity shall be at Invaresh’s sole discretion.
- g) Maintain appropriate climate control of the Cloud Environments.
- h) Provide back-up power generation and uninterrupted power supplies.
- i) Provide change management to ensure all infrastructure and application changes are coordinated, recorded, authorized, and tracked.
- j) Secure Cloud Environments to industry standards current from time to time.

2.3 Exclusions. The following services are excluded from the scope of the SaaS Services:

- a) Configuration – ongoing configuration of the Invaresh Software including but not limited to integrating Customer data sources, configuring data structures, workflow creation, design and configuration, connectors to third party software systems, input customer configuration data (Recipes, Department and Store data, etc.).
- b) Ongoing business use of the Invaresh Software, including but not limited to user account management, permissions, updates of Customer’s products, product launches, workflow, and approvals.
- c) Detailed functional training on the use of Invaresh Software beyond basic inquiries or general requests for assistance with a particular feature.

2.4 Environment Type. Invaresh shall deploy, manage, and operate the Invaresh Software in Cloud Environments as SaaS Services. Each Cloud Environment will be set up as either a Testing and Development Environment (“TDE”) or a Production Environment.

- a) A TDE will include a single instance of each Invaresh Software, and is intended to support activities where performance and redundancy are not required, such as developer unit and integration testing, end to end user story testing and training. Invaresh has no obligation to meet throughput or performance levels for a TDE.
- b) A PE will be suitable for production, performance testing, staging and production replication Cloud Environments. A PE will include a fully redundant server and application deployment architecture for scalability and high availability purposes.

2.5 Testing and Development Service Levels. Not including Excluded Downtime, for each TDE Invafresh shall:

- a) Monitor the availability of the Invafresh Software in the Cloud Environment during Regular Business Hours.
- b) There is no Availability Standard applicable for TDEs.

2.6 Production Environment Service Levels. Not including Excluded Downtime, for each instance of the Invafresh Software provided in a production environment (“PE”) Invafresh shall:

- a) Have an Availability Standard of 99.5%.
- b) Use commercially reasonable efforts to conduct all scheduled maintenance of the PE and Invafresh Software between the hours of 3:00 pm and 11:00 pm in the Time Zone on Tuesdays (“Maintenance Window”).
- c) Whenever the PE is in Downtime in order to conduct emergency maintenance, Invafresh shall notify Customer, as soon as possible after determining the need for such emergency maintenance and such notification shall provide all available information regarding the reason for such emergency maintenance, as well as any estimates of the likely Downtime duration. Once the emergency maintenance event has been resolved, Invafresh shall notify Customer.

2.7 Service Level Credits

- a) The Availability Standard shall have been met in any month in which the Actual Availability, calculated in accordance with this Exhibit, is equal to or greater than 99.5%. The Actual Availability shall be measured over the period of each calendar month commencing with the month in which Invafresh first gives the Customer Access to the Invafresh Software in the PE (but, for measurement purposes, excluding any days in the month prior to the date of such installation where such date does not occur at the beginning of the month).
- b) For each calendar month in which Invafresh fails to meet the Availability Standard, Customer shall, as its sole remedy for such failure, accrue service level credits (the “Service Level Credits”). Service Levels Credits are calculated as a percentage of the monthly Fees in Exhibit A-1 as shown below:

Actual Availability in a Month	Service Credit Percentage
Equal to or greater than 98.5% but less than 99.5%	2.5% of Subscription Fees (calculated on a monthly basis)
Less than 98.5%	5% of Subscription Fees (calculated on a monthly basis)

2.8 Incident Management. In the event of a service disruption in a Cloud Environment, the following priorities shall be used to qualify the Program Error which will be classified and resolved in accordance with this Exhibit.

Priority 1: Performance or functionality on Customer’s PE is so severely impacted that Customer cannot reasonably continue operations. Includes “system down” situations, loss of connectivity to the Service, application unavailability or degradation that the Customer cannot reasonably continue their work across a majority of their Sites.

Priority 2: Operations on Customer’s PE can continue but in a materially degraded capacity. Includes situations in which a major functional use case is not working in most or all cases, or in which a major functional use case has errors that severely impact Customer’s in-store operations or operational activities across a majority of their Store Sites

Priority 3: All situations that are neither Priority 1 nor Priority 2. Includes situations in which the Program Error is affecting efficiency or a functional use case does not operate as stated, but the impact to Customer’s core operations is not severe.

Invafresh may reclassify service disruptions or Program Error if it has a reasonable belief that Customer’s classification is incorrect.

2.9 Service Requests. Invafresh’s customer support team will respond to functional and other general inquiries by Customer during Regular Business Hours.

2.10 Invafresh Support Contacts. Invafresh will provide Customer with a telephone number and a URL that Customer may use to report incidents. For Priority 1 or Priority 2, Customer agrees to notify Invafresh via both 24x7 helpdesk telephone and a URL to be provided by Invafresh to Customer. Invafresh’s customer support manager will identify a designated support team to work with Customer’s Technical Liaisons (as identified below). A member of the Invafresh support team will contact Customer’s designated Technical Liaisons below following execution of this Agreement.

2.11 SaaS Services Technical Support Levels. Customer, and not Invafresh, will provide first and second level technical support to its in-store operations and corporate end users.

- a) First level technical support consists of the following tasks: (i) log the user calls; (ii) confirm the incident details (functional area of the software, description of the incident, any time-of-day coincidences); (iii) verify whether it is a problem or an operator error; and (iv) confirm the environment (production or testing, handheld hardware, browser version).
- b) Second level technical support consists of the following: (i) reproduce the problem, if possible; (ii) confirm the Invafresh Software version where the incident was reported; (iii) test with different equipment (if hardware is a possible cause); and (iv) collate the logged end user calls and look for patterns (predict failures, etc.).
- c) Third level technical support consists of the following: (i) review findings escalated by second level support; (ii) review Program Errors believed to be related to the Invafresh Software; (iii) develop a course of action to address the Program Error; and (iv) deliver fixes in accordance with the response and repair times in this Exhibit.

2.12 Customer’s Technical Liaisons. Customer shall appoint at least one Customer Technical Liaison who is responsible for all communications with Invafresh’s technical support representatives. Such liaisons will have sufficient technical expertise, including completion of appropriate Invafresh training

courses in order to perform Customer’s obligations hereunder.

2.13 Program Error Response. Invafresh will use reasonable efforts to respond to Customer with respect to any reported incident per the table below:

Program Error Priority	Target Response Time	Target Repair Time
1	2 hours	Invafresh will provide a work-around or restore current processing within 6 hours using reasonable efforts and provided that Customer fully co-operates with Invafresh to deploy work-around or restore current processing.
2	4 hours	Invafresh will provide a work-around or correct errors causing malfunction within 16 hours using its reasonable efforts and provided that Customer fully co-operates with Invafresh to deploy work-around or to correct errors. In the event that a fix is required in the code base, then a fix will be provided in a future release.
3	1 business day	Fix provided in future release.

EXHIBIT A-2 - ON-PREMISE TERMS

ON-PREMISE DEPLOYMENT TERMS

The terms set out herein shall apply to On Premise Deployment only. If Customer has Access to Invaresh Software via SaaS Services, the terms set out in Exhibit A-1 shall apply to such Access.

1. DEFINITIONS

As used herein, the following terms shall have the meaning set forth below:

“**Update**” means a bug fix, update, patch, module replacement or improved version of the whole or any part of the Invaresh Software that is provided as part of technical support as outlined herein.

“**Time Zone**” means Eastern Time (“ET”).

2. SOFTWARE SUPPORT

2.1 Support Services. Invaresh will provide the following support services (“Support Services”) to Customer in accordance with the details set forth below.

2.2 Customer Obligations. In addition to providing Invaresh with full, good faith cooperation and such information as may be required by Invaresh in order to perform the Support Services, Customer will: (i) provide Invaresh with high speed remote access to Customer’s server; (ii) ensure that all installation of the Invaresh Software are done by Invaresh certified installers; (iii) provide Invaresh with all reasonably necessary information concerning Customer’s hardware, network and security infrastructure and functional use of the Software, as may be required for the performance of the Support Services; and (iv) ensure access to key personnel needed to provide the support and maintenance. If Customer fails or delays in its performance of any of the foregoing responsibilities, Invaresh will be relieved of its obligations hereunder to the extent such obligations are dependent upon such performance.

2.3 Exclusions. The following services are excluded from the scope of the Support Services:

- a) Configuration – ongoing configuration of the Invaresh Software including but not limited to integrating Customer data sources, configuring data structures, workflow creation, design and configuration, connectors to third party software systems, input customer configuration data (Recipes, Department and Store data, etc).
- b) Ongoing business use of the Invaresh Software, including but not limited to user account management, permissions, updates of Customer’s products, product launches, workflow and approvals.
- c) Detailed functional training on the use of Invaresh Software beyond basic inquiries or general requests for assistance with a particular feature.

2.4 Incident Management. In the event of a Program Error, the following priorities shall be used to qualify the Program Error which will be classified and resolved in accordance with this Exhibit.

Priority 1: Performance or functionality on Customer’s PE is so severely impacted that Customer cannot reasonably continue operations. Includes “system down” situations, inability to use the application or degradation that the Customer cannot reasonably continue their work across the majority of their Sites.

Priority 2: Operations on Customer’s PE can continue but in a seriously degraded capacity. Includes situations in which a major functional use case is not working in most or all cases, or in which a major functional use case has errors that severely impact Customer’s in-store operations or operational activities across the majority of their Store Sites

Priority 3: All situations that are neither Priority 1 nor Priority 2. Includes situations in which the Program Error is affecting efficiency or a functional use case does not operate as stated, but the impact to Customer’s core operations is not severe.

Invaresh may reclassify a Program Error if it has a reasonable belief that Customer’s classification is incorrect.

2.5 Service Requests. Invaresh’s customer support team will respond to functional and other general inquiries by Customer during Regular Business Hours.

2.6 Invaresh Support Contacts. Invaresh will provide Customer with a telephone number and a URL that Customer may use to report incidents. For Priority 1 or Priority 2, Customer agrees to notify Invaresh via both 24x7 helpdesk telephone and a URL to be provided by Invaresh to Customer. Invaresh’s customer support manager will identify a designated support team to work with Customer’s Technical Liaisons (as identified below). A member of the Invaresh support team will contact Customer’s designated Technical Liaisons below following execution of this Agreement.

2.7 Support Services Technical Support Levels. Customer, and not Invaresh, will provide first and second level technical support to its in-store operations and corporate end users.

- a) First level technical support consists of the following tasks: (i) log the user calls; (ii) confirm the incident details (functional area of the software, description of the incident, any time-of-day coincidences); (iii) verify whether it is a problem or an operator error; and (iv) confirm the environment (production or testing, handheld hardware, browser version).
- b) Second level technical support consists of the following: (i) reproduce the problem, if possible; (ii) confirm the Invaresh Software version where the incident was reported; (iii) test with different equipment (if hardware is a possible cause); and (iv) collate the logged end user calls and look for patterns (predict failures, etc.).

- c) Third level technical support consists of the following: (i) review findings escalated by second level support; (ii) review Program Errors believed to be related to the Invafresh Software; (iii) develop a course of action to address the Program Error; and (iv) deliver fixes in accordance with the response and repair times in this Exhibit.

2.8 Customer’s Technical Liaisons. Customer shall appoint at least one Technical Liaison who is responsible for all communications with Invafresh’s technical support representatives. Such liaisons will have sufficient technical expertise, including completion of the appropriate Invafresh training courses in order to perform Customer’s obligations hereunder.

2.9 Program Error Response. Invafresh will use reasonable efforts to respond to Customer with respect to any reported incident per the table below:

Program Error Priority	Target Response Time	Target Repair Time
1	2 hours	Invafresh will provide a work-around or restore current processing within 6 hours using its reasonable efforts and provided that Customer fully co-operates with Invafresh to deploy work-around or restore current processing.
2	4 hours	Invafresh will provide a work-around or correct errors causing malfunction within 16 hours using its reasonable efforts and provided that Customer fully co-operates with Invafresh to deploy work-around or to correct errors. In the event that a fix is required in the code base, then a fix will be provided in a future release.
3	1 business day	Fix provided in a future release.

2.10 Program Error Exclusions. Invafresh will not be required to correct any Program Error caused by:

- a) Customer’s unauthorized incorporation or attachment of a feature, program, or device to the Invafresh Software, or any part thereof;
- b) Any non-conformance caused by accident, transportation, neglect, misuse, alteration, unauthorized modification, or unauthorized enhancement of the Invafresh Software;
- c) The failure to provide a suitable installation environment;
- d) Use of the Invafresh Software for other than the specific purpose for which Invafresh’s software programs are designed and rights to Access are granted;
- e) Customer’s use of defective media or defective duplication of Invafresh’s software; or
- f) Customer’s failure to incorporate any Updates previously provided to Customer that correct such Program Errors.

2.11 Third Party Hardware and Software Support. Technical support services provide support for Invafresh Software on Approved Servers. Invafresh has no obligation to provide services for third Party hardware and software under the terms of this Agreement. For greater certainty, Invafresh will provide support for all Invafresh Software referenced in Exhibit A-2, operating on third party software and servers as outlined in the Documentation, however, services required to install, operate, maintain, and troubleshoot third party software and servers is the responsibility of Customer.

2.12 Right to Additional Fees. Invafresh reserves the right to charge Customer additional fees at its then-standard rates for services performed in connection with reported Program Errors which are later determined to have been due to hardware or software not supplied by Invafresh. Notwithstanding the foregoing, Invafresh has no obligation to perform services in connection with Program Errors (i) resulting from hardware or software not supplied by Invafresh; or (ii) which occur in a release of the Invafresh Software which is not the then-current release or not a Supported Version.

2.13 Access to Updates. Invafresh will make available all generally available Updates of any licensed Invafresh Software to Customer as part of the Maintenance and Support Fees, exclusive of Professional Services to install or apply the Update.

2.14 Customer Equipment. Customer is responsible for obtaining and maintaining any equipment or ancillary services needed to use the Invafresh Software, including, without limitation, modems, hardware, software (including third party software), internet service and long distance or local telephone service. Customer shall be solely responsible for ensuring that such equipment or ancillary services are compatible with the Invafresh Software.