

Incisively Software and Services Terms and Conditions

This page together with our Privacy Policy and Cookie Policy (<http://www.incisive.ly/privacy-policy>) gives you information about us and the legal terms and conditions on which we sell the Service on our website to you.

These terms will apply to any contract between us for the sale of the Service to you. Please read these terms carefully and make sure that you understand them, before ordering any Service from our site. Please note that before placing an order you will be asked to agree to these terms. If you refuse to accept these terms you will not be able to order any Service from our site.

We amend these terms from time to time as set out in clause 17. Every time you wish to order a Service, please check these terms to ensure you understand the terms which will apply at that time.

Your continued use of the Service after any such change constitutes your acceptance of the new terms. If you do not agree to any of these terms or any future terms, do not use or access (or continue to access) the Service. These terms apply to all visitors, users, and others who access the Service ("**Users**").

1 Information about us

- 1.1 We are **Incisively Limited**, a company incorporated in England and Wales (registration number 08857309) having its registered office at Fryern House, 125 Winchester Road, Chandlers Ford, Hampshire, England SO53 2DR ("**Incisively**"). Our VAT number is 188 4799 31. You may contact us by email at help@incisive.ly
- 1.2 Incisively provides an optimisation service enabling customers to conduct continuous optimisation design to improve the effectiveness of websites, applications, emails and other data (the "**Service**"). As part of this service Incisively provides access to certain online dashboard reports which utilise software licensed from Looker.

2 Definitions and interpretation

- 2.1 In these terms:

"**Commencement Date**" means the date specified in our Order Confirmation;

"**Confidential Information**" means all information that is proprietary or confidential but shall not include:

- a) information which is or becomes publicly known other than through any act or omission of the receiving party;
- b) was in the other party's lawful possession before the disclosure;
- c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- d) is independently developed by the receiving party, which independent development can be shown by

		written evidence; or
		e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body;
"Customer" or "you"		you or the person or firm who purchases the Service from us;
"Customer Data"		all works and materials: <ul style="list-style-type: none"> a) uploaded to, stored on, processed using or transmitted via the Service by or on behalf of the Customer or by any person or application or automated system using the Customer's account; b) otherwise provided by the Customer directly or indirectly to Incisively in connection with these terms including any profile information, data, and other content or information.
"Dashboard Account"		means an account to use the tool provided under license from Looker;
"Intellectual Property Rights"		means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction;
"Looker"		means Looker Data Sciences Inc.;
"Order Confirmation"		means our email confirmation accepting your order;
"Order Form"		means the order form for the Service completed by the Customer;
"Permitted Purpose"		means product analytics and optimisation;
"Products"		the products provided with the Dashboard Account;
"Service"		means the software service known as Incisively that is owned and operated by Incisively, and that will be made available to the Customer as a service via the Internet under these terms, including any code that may be embedded on the Customer's sites for the purposes of providing the services;

- "Term"** means the period set out in the Order Confirmation;
- "Upgrades"** means new versions of, and updates to, the Service, whether for the purpose of fixing an error, bug or other issue in the Service or enhancing the functionality of the Service.

3 Business Customer

- 3.1 You confirm that you have authority to bind any business on whose behalf you use our site to purchase the Service.
- 3.2 These terms and any documents expressly referred to in them constitute the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representation and understandings between us, whether written or oral, relating to its subject matter.
- 3.3 You acknowledge that in entering into these terms you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms.
- 3.4 You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

4 The Service

- 4.1 You need to register with Incisively and create an account. You may never use another User's account without permission from us. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account and you must keep your account password secure. You must notify Incisively immediately of any breach of security or unauthorized use of your account. Incisively will not be liable for any losses caused by any unauthorized use of your account. By providing Incisively with your email address you consent to us using your email address in accordance with our Privacy Policy (<http://www.incisive.ly/privacy-policy>).
- 4.2 Incisively will make available the Service to the Customer by setting up an account for the Customer on the Service, and providing to the Customer login details for that account.
- 4.3 Subject to the limitations set out in clause 4.4.1 and the prohibitions set out in clauses 4.4.2, 4.4.3 and 4.6, Incisively hereby grants to the Customer, for the Term, a non-exclusive, non-transferrable licence to use the Service for the Permitted Purpose in accordance with these terms and solely for the Customer's internal business operations.
- 4.4 The licence granted by Incisively to the Customer under clause 4.3 is subject to the following limitations:
- 4.4.1 the Service may only be used for:
- (a) requesting upto 10,000 optimization suggestions if it is a Free or Beta Account; or

- (b) the specified number of labs and optimization suggestions as set out in the Order Form if it is a paid account.

4.4.2 you agree not to engage in any of the following prohibited activities:

- (a) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping";
- (b) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the Incisively servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser or that has the effect of storing, copying, modifying, distributing, reselling any content (whether visual, audio or audio-visual);
- (c) transmitting spam, chain letters, or other unsolicited email;
- (d) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service;
- (e) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure;
- (f) uploading invalid data, viruses, worms, or other software agents through the Service;
- (g) collecting or harvesting any personally identifiable information, including account names, from the Service;
- (h) using the Service in a way that infringes intellectual property or other proprietary rights of us or a third party;
- (i) using the Service for any commercial solicitation purposes;
- (j) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity;
- (k) interfering with the proper working of the Service;
- (l) accessing any content on the Service through any technology or means other than those provided or authorized by the Service;
- (m) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein;
- (n) accessing all or any part of the Service in order to build a product or service which competes with the Service;
- (o) using the Service to provide services to third parties;

- (p) removing, obscuring or altering any notices or indications of our Intellectual Property Rights, any trade names, trade marks, service marks, logos, trade dress and any other distinctive or proprietary symbols, labels, designs or designations or any electronic notices;
- (q) using the Service for any purpose which may harass any person or cause damage or injury to any person or property, involve the publication of any material that is false, defamatory, harassing or obscene, violates any privacy rights or promotes bigamy, racism, hatred or harm;
- (r) using the Service in any way that is unlawful, illegal, fraudulent or harmful.

4.4.3 Except as expressly permitted in these terms you agree not to use, copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the software underlying the Service or any part thereof, unless this is expressly permitted or required by law, or unless authorized by Incisively in writing.

4.5 In addition to any other rights we may have under these terms, we reserve the right to remove or disable access to any material which breaches the restrictions in clause 4.4 and you agree to indemnify us in respect of any loss or damage we suffer arising as a result of such breach.

4.6 You shall comply with all applicable laws when using the Service.

4.7 We shall use commercially reasonable endeavours to make the Service available 24 hours a day, 7 days a week, except for:

4.7.1 planned maintenance carried out during the maintenance window of 10:00 pm to 2:00 am UK time;

4.7.2 unscheduled maintenance performance if outside 9:00 am to 5:00 pm provided that we have used reasonable endeavours to give you notice in advance; and

4.7.3 we may have to suspend the Service if we have to deal with technical problems or to make improvements agreed between you and us in writing to the Service. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency.

5 Looker Dashboard Account

If you are receiving the Dashboard Account as part of the Service you agree to the following additional terms:

5.1 use of the Products is limited to your business purposes;

5.2 title to and ownership of the Products and the documentation remain with Looker and its suppliers;

5.3 you may not, and shall not permit anyone else to:

5.3.1 alter or modify the Product or documentation;

- 5.3.2 reverse engineer, decompile, disassemble or in any way attempt to derive the source code for the Products; or
 - 5.3.3 transfer the Products or documentation to any third party or disclose or otherwise make the Products or documentation available to any third party other than ASP Client's agents or contractors performing services for you. We shall be entitled to audit your use of the Products;
 - 5.3.4 all direct, consequential, incidental, special, exemplary and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Looker and its suppliers;
 - 5.3.5 Looker is expressly named as an intended third party beneficiary of the these terms, with the right to enforce its terms directly against you;
 - 5.3.6 the Products shall only be used to serve a number of authorised and/or database connections specified on the applicable Order Form accepted by Looker.
- 5.4 Express warranty is limited to the performance of the Products in accordance with the applicable Looker documentation for a period of time beginning of the delivery date and not to exceed the warranty period provided to you for any other Products that Customer bundle with the Products which may not exceed one year unless a longer period is required by law or is pre-approved in writing by Looker. All implied warranties regarding the Products and documentation by Looker and its suppliers are disclaimed;

6 Incisively Ownership Rights

Incisively and/or its licensors own all right, title and interest in and to the Service, including without limitation any improvements thereto, updates, and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, and copyrights (the "**Incisively Content**"), and all Intellectual Property Rights (as defined below) related thereto and derivative works of the foregoing. Except as expressly provided herein, nothing in these terms shall be deemed to create a license in or under any such Intellectual Property Rights (as defined below), and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Incisively Content or materials on the Service for any purpose not expressly permitted by these terms is strictly prohibited.

7 Customer Data and Ownership Rights

- 7.1 As between you and Incisively you own all right, title and interest in and to your website and all data and content embedded thereon or contained therein (excluding the Service), and any Intellectual Property Rights for any of the foregoing embodied therein.
- 7.2 Customer Data will be and will remain your property. Incisively shall only store non-personally identifiable Customer Data. For the avoidance of doubt, this includes without limitation, using Customer Data to create reports, provide and improve the Service, and provide better functionality to our customers.

- 7.3 You expressly grant, and you represent and warrant that you have all rights necessary to grant, to Incisively, a royalty-free, sublicensable, transferable, non-exclusive, worldwide license to use, develop, transmit, distribute, modify, reproduce, publicly display, and create derivative works of any Customer Data for the purposes of (a) providing the Service (b) developing, maintaining, supporting, and improving the Service so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual; (c) marketing, promoting and advertising the Service so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual; and (d) creating and distributing reports so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual.
- 7.4 You expressly grant, and represent and warrant that you have all rights necessary to grant, to Incisively, a royalty-free, sublicensable, non-exclusive, worldwide license to use, reproduce, modify, publish, and distribute your name, logo, or any other identifying words or marks used by and/or associated with you to identify you ("**Your Marks**"), in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service to identify you as a customer of Incisively in connection with any marketing, promotion or advertising of the Service and providing references regarding the Service/case studies to other customers. Unless otherwise approved in writing by you, we will not remove, obscure, or alter any of Your Marks.

8 Privacy

You will not (and will not allow any third party to) use the Service to track, collect or upload any data that personally identifies an individual (such as a name, email address or billing information), or other data which can be reasonably linked to such information by Incisively. You will have and abide by an appropriate privacy policy and will comply with all applicable laws, policies, and regulations relating to the collection of information from users of your site including the Data Protection Act 1998.

9 Charges

- 9.1 Incisively will guide you through the steps you need to take to place an order with us. Our order process allows you to check and amend any errors before submitting the Order Form to us. Please take the time to read and check your order at each page of the order process.
- 9.2 After you place an order, you will receive an email from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 9.3.
- 9.3 We will confirm our acceptance to you by sending you an Order Confirmation and the contract between us will only be formed when we send you the Order Confirmation.
- 9.4 If we are unable to supply you with the Service, we will inform you of this by email and we will not process your order. If you have already paid for the Service, we will refund you the full amount.
- 9.5 The fees to be paid by you for the Service from the Commencement Date shall be as set out in the Order Form.

- 9.6 Prices for the Service may change from time to time, but changes will not affect any order you have already placed.
- 9.7 The price of the Service includes VAT (where applicable) at the applicable current rate chargeable in the UK for the time being. However, if the rate of VAT changes between the date of your order and the Commencement Date, we will adjust the VAT you paid unless you have already paid for the Service in full before the charge in VAT takes effect.
- 9.8 You shall pay the fees (initial fee and any subsequent fees) for the Service in accordance with the Order Form.
- 9.9 No Refunds. In the event you terminate the Service you shall receive no refund or exchange for any fees for any portion of the Service, any content or data associated with your account, or for anything else.
- 9.10 Free Accounts
- 9.10.1 If you receive a free or unsubscribed access subscription ("**Free Account**") to the Service or a beta release product ("**Beta**"), then you may use the Service or Beta release in accordance with the terms and conditions of these terms for the period designated in the order form or otherwise by Incisively.
- 9.10.2 Incisively may revoke your right to use any Free Account or Beta and any related services at any time without liability and does not guarantee that future versions will be made available under the same commercial or other terms. You acknowledge your Free Account subscription or Beta release may not be complete or fully functional and may contain bugs, errors, omissions and other problems. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, INCISIVELY WILL HAVE NO WARRANTY, INDEMNITY OR SUPPORT OBLIGATIONS WITH RESPECT TO FREE ACCOUNTS OR BETA RELEASES.

10 Upgrades

- 10.1 The Customer acknowledges that from time to time during the Term Incisively may apply Upgrades to the Service, and that such Upgrades may result in changes to the appearance and/or functionality of the Service.
- 10.2 The Customer shall not be subject to any additional fees arising out of the application of the Upgrade, save where:
- 10.2.1 the Upgrade introduces new functionality to the Service;
- 10.2.2 that new functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade; and
- 10.2.3 access to or use of the new functionality is chargeable to the customers of Incisively using the Service generally.
- 10.3 Any decision by the Customer not to pay the fees for the new functionality will not prejudice the Customer's access to and use of the rest of the Service.

11 Warranties

- 11.1 The Customer warrants to the Incisively that it has the legal right and authority to enter into and perform its obligations under these terms.
- 11.2 Incisively warrants to the Customer that the Service (excluding for the avoidance of doubt Customer Data) will not:
- (a) breach any laws, statutes, regulations or legally-binding codes; or
 - (b) infringe any third party's person's Intellectual Property Rights.
- 11.3 The foregoing warranties are in lieu of all other warranties on the part of Incisively, either express or implied, statutory or otherwise as to any matter whatsoever arising in connection with the Service, including, without limitation, the condition of the Service or its fitness for any particular purpose, all of which are hereby expressly excluded. No oral or written information or advice given by Incisively, its distributors, agents, dealers or employees shall create a warranty or representation or in any way increase the scope of the above warranties.

12 Defects and security

- 12.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs, and Incisively gives no warranty or representation that the Service will be wholly free from such defects, errors and bugs.
- 12.2 We are not responsible for delays, delivery, failures and you acknowledge that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.3 We have implemented commercially reasonable and industry standard technical and organizational measures designed to secure Customer Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, you acknowledge that Incisively cannot guarantee that unauthorized third parties will never be able to defeat those measures.
- 12.4 In the event of loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Incisively to use reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Incisively. Incisively shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

13 Limitations and exclusions of liability

- 13.1 Nothing in these terms limits our liability for death or personal injury caused by our negligence (including our employees, agents' or subcontractors' negligence) or for fraud or fraudulent misrepresentation, or any other matter for which it is unlawful to exclude or limit liability.
- 13.2 Except as expressly stated in these terms, Incisively will not be liable to the Customer for any of the following:
- 13.2.1 loss of revenue;

- 13.2.2 loss of actual or anticipated profits whether arising in the normal course of business or otherwise (including, without limitation loss of profits, sales or revenue);
 - 13.2.3 loss of anticipated savings;
 - 13.2.4 interruption of service; loss of business;
 - 13.2.5 loss of business opportunity;
 - 13.2.6 loss of goodwill;
 - 13.2.7 loss of or damage to reputation;
 - 13.2.8 loss or corruption of data;
 - 13.2.9 any indirect or consequential loss or damages however caused which arise directly or indirectly from these terms.
- 13.3 Incisively's total aggregate liability in respect of all losses arising under or in connection with these terms whether in contract, tort (including negligence) breach of statutory duty or otherwise, is limited to the total of the fees paid to Incisively by the Customer under these terms.
- 13.4 The provisions of clauses 13.1 – 13.5 will survive any termination or expiry of these terms.
- 13.5 Except as expressly stated in these terms, we do not give any representation, condition or warranty which might be implied or incorporated into these terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular we will not be responsible for ensuring the Service is suitable for your purpose.

14 Data protection

- 14.1 In connection with any Customer Data, you hereby represent and warrant that (a) any personally identifiable information, about your end users that you provide to Incisively, directly or indirectly, hereunder was, is, and will be collected with the informed consent of such end users, (b) you have obtained all necessary rights, releases, and permissions to provide such Customer Data to Incisively, and (c) the collection, use, and disclosure of such information by you does not violate any laws or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies.
- 14.2 Incisively takes no responsibility and assumes no liability for any Customer Data that you or any other User or third party provides, posts, publishes or transmits over the Service. You shall be solely responsible for Customer Data and the consequences of using, disclosing, or transmitting it, and you agree that Incisively is only acting as a passive conduit.

15 Confidentiality

Each party shall:

- 15.1 keep confidential and not disclose the other party's Confidential Information to any person save as expressly permitted by this clause 15;

15.2 not use the other party's Confidential Information for any purpose other than implementation of these terms;

15.3 protect the other party's Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own Confidential Information of a similar nature, being at least a reasonable degree of care.

16 Termination

16.1 The order shall continue unless:

16.1.1 terminated by the Customer by providing not less than one month's written notice, such termination to take effect on the next anniversary of the Commencement Date; and/or

16.1.2 terminated by Incisively providing one month's written notice, such termination to take effect on expiry of the notice.

16.2 Either party may terminate the order immediately by giving written notice to the other party if:

16.2.1 the other party commits any material breach of any term of these terms, and:

(a) the breach is not remediable; or

(b) the breach is remediable, but the other party fails to remedy the breach within thirty days of receipt of a written notice requiring it to do so; or

16.2.2 the other party persistently breaches the terms of these terms (irrespective of whether such breaches collectively constitute a material breach);

16.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

16.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.2.5 a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

16.2.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

16.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

16.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen days; or

16.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.3 to clause 16.2.9 (inclusive).

16.3 Upon termination of the order, your right to use the Service will immediately cease and all amounts due under Section 7 shall become immediately due and payable. All provisions of these terms will cease to have effect, save for any provision that expressly or by implication is intended to come into or continue in force on or after termination of these terms.

17 Our right to vary these terms

Every time you order a Service from us, the terms in force at the time of your order will apply and we may reuse those terms from time to time.

18 Force Majeure

The performance by Incisively of its obligations hereunder shall be extended by any period or periods during which the performance of such obligations is delayed due to any event or circumstance beyond Incisively' reasonable control, irrespective of the jurisdiction in which such event or circumstances shall arise.

19 Assignment

19.1 The rights granted to the Customer under these terms are non-assignable.

19.2 The Customer shall use the Service for its own business and not for the purpose of providing a service to any third party (including, but not limited to, consultancy services) or for renting it to any third party.

19.3 Incisively may assign or transfer the rights it has granted under these terms.

20 General

20.1 Failure or delay by Incisively to enforce any of its rights under these terms shall not be or be deemed to be a waiver of such rights.

20.2 Subject to clause 5.3.5, these terms do not confer any rights on any person or party (other than the parties to these terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.3 The waiver of one breach or default under these terms shall not constitute the waiver of any other breach or default.

- 20.4 All notices and demands under these terms shall be in writing and shall be served by fax, personal service or by mail at the address of the receiving party set out above. A notice delivered by personal service shall be deemed to have been received when delivered (or if not in business hours at 9.00am the first business day following delivery). A correctly addressed notice sent by post shall be deemed to have been received at the time it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission.
- 20.5 These terms and any dispute or claim arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with English law and be subject to the non-exclusive jurisdiction of the English courts.