



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 15, 2017

Department: Information Technology Agenda Planning Date: 3/9/17 Time required: 5 minutes

Audio/Visual aids

Contact: Tom Frey, IT Director Phone: 503 584-7782

Department Head Signature: Tom Frey

TITLE Approval of a Sole Source Procurement for the renewal of Innotas software application licenses for a five year term.

Issue, Description & Background The Information Technology Department entered into a contract with Innotas by Planview in March 2011 for the initial purchase of intellectual property user licenses for a web services application and one-time installation services. The original contract was awarded based on an informal written quote process. The County continues to use the proprietary web services application and has paid for annual license renewals according to the Automatic Renewal Clause 12.2 of the General Terms and Conditions incorporated into the original executed license agreement. County IT staff uses this software as a portfolio and project management tool for the efficient and effective management of IT related services, projects and resources required to complete approved County services and projects. The annual renewal of the software licenses and its attendant upgrades, maintenance patches and technical support is necessary for the continued utilization of this software application at the County as allowed under Marion County Public contracting Rules in Section 20-0275 (2)(a). Findings for Exemption from the Contract Review Board Rules are attached as supporting documentation for this request.

Financial Impacts: Annual renewals have averaged \$26,000 since the installation of this application. The Department has budgeted funds for this annual expenditure each year. The current license term will expire on March 31, 2017 and the department has budgeted up to \$33,000 for this expenditure.

Impacts to Department & External Agencies The County intends to utilize this software until decisions are made to replace this proprietary software application. It is necessary to keep the software current during its continued use to provide efficient and effective management for IT related services, projects and resources.

Options for Consideration: Options for consideration are: 1. Approve the sole source procurement based on the justification and findings attached and grant an exemption for a Sole Source Procurement for annual license and maintenance for this software; 2. Deny the request and require the department to issue a new solicitation document for find a replacement software to provide a needed project management tool for IT related services, projects and resources.

Recommendation: It is the Information Technology Department's recommendation that the Board approve the request for a Sole Source Procurement for annual software license and support fees for Innotas software.

List of attachments: Board Order



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

Findings for Exemption Document  
Copy of Original Contract for Services

Presenter:

Camber Schlag, Marion County Finance and Tom Frey, Information Technology

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Peggy Mitchell, Information Technology pmitchell@co.marion.or.us  
Camber Schlag, Finance cshlag@co.marion.or.us

**BEFORE THE BOARD OF COMMISSIONERS**

**FOR MARION COUNTY, OREGON**

In the Matter of approving a sole source )  
procurement for renewal of web services )  
application software license from Innotas )  
as allowed by section 20-0275 of the )  
Marion County Public Contracting Rules )

**ORDER No. \_\_\_\_\_**

This matter came before the Marion County Board of Commissioners, acting as the Marion County Contract Review Board, at its regularly scheduled public meeting on March 22, 2017.

WHEREAS, Marion County, by and through its Department of Information Technology entered into a contract with Innotas (by Planview) in March 2011 for the initial purchase of intellectual property user licenses for a web services application and one-time implementation services; and

WHEREAS the original contract was awarded based on an informal written quote process according to the Marion County Public Contracting Rules. The County continues to utilize the proprietary web services application and has paid for annual license renewals according to the Automatic Renewal Clause 12.2 of the General Terms and Conditions incorporated into the original contract; and

WHEREAS it is necessary to keep the software current during its continued use to provide efficient and effective project management for IT related services, projects and resources; and

WHEREAS the IT Department wishes to continue contracting with this vendor until such time that this proprietary software application is replaced with a new product; and

WHEREAS the renewal of this software application license would allow for the efficient utilization of existing goods and services as described in the Marion County Public Contracting Rules in Section 20-0275(2)(a).; and

WHEREAS, the County published the required public notice on February 17, 2017 and received no protests,

IT IS HEREBY ORDERED that a sole-source determination be made to award a contract to Innotas for software application licenses for a five (5) year term at a cost of \$150,000 with an option to renew for an additional five (5) year period.

DATED this \_\_\_\_ day of March 2017.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Original – Clerk’s Office  
cc: Finance – Attn: Camber Schlag  
Board of Commissioners - Attn: Jan Fritz

**MARION COUNTY  
FINDINGS FOR EXEMPTION  
FROM CONTRACT REVIEW BOARD RULES  
FOR INNOTAS WEB SERVICES SOFTWARE LICENSES**

Marion County Information Technology Department is requesting an exemption to allow the use of sole source procurement for the renewal of software license fees for a web services application.

**Background**

The Information Technology (IT) Department entered into a contract with Innotas (by Planview) in March 2011 for the initial purchase of intellectual property user licenses for a web services application and one-time implementation services. The original contract was awarded based on an informal written quote process according to the Marion County Public Contracting Rules. The County continues to utilize the proprietary web services application and has paid for annual license renewals according to the Automatic Renewal Clause 12.2 of the General Terms and Conditions incorporated into the original contract. The software license user data is governed by an Innotas Order Form determined prior to the expiration of the current license period to provide for the adjustment of license assignments to best support the IT Department needs. Annual renewals have averaged approximately \$26,000 since installation and the total costs paid to this vendor have exceeded the written quote process dollar limitation. The Department has currently budgeted \$33,000 for this annual expenditure. The current license term will expire on March 31, 2017.

**Findings**

County IT staff uses this software as a portfolio and project management tool for the efficient and effective management of IT related services, projects, and resources required to complete approved County services and projects. Through the use of this tool, individual project information is consolidated to provide senior managers a portfolio view of the service(s) and project(s) to assist with strategic decision making milestones throughout the term of the service or project. This product has been rated as one of the better portfolio and project management tools available in the marketplace.

Upon purchase of a new software application, the original license agreement and/or purchase order for a new software application implemented by the County will typically include provisions for annual maintenance/support license fees that are renewable as long as the user continues to use the software. Upon renewal, the County continues to have the most current up-to-date software version and support for any upgrades/patches/fixes/issues that may arise during its use of the software and often includes staff training opportunities as needed. Failure to renew the agreement results in outdated or de-supported software. The annual renewal of the software license and its attendant upgrades, maintenance patches and technical support is necessary for the continued utilization of this software application at the County. The renewal of this software application license would allow for the efficient utilization of existing goods and services as described in the Marion County Public Contracting Rules in Section 20-0275(2)(a).

The continued purchase of this software license through Innotas is unlikely to diminish competition of public contracts or encourage favoritism. This software application is provided solely by Innotas as the developer and copyrighted owner of this intellectual property product. The County intends to continue the use of this software application in the near future. It is necessary to keep the software current during its continued use to provide efficient and effective project management for IT related services, projects and resources. Provisions in the original contract executed in March 2011 did include annual license renewals according to the Automatic Renewal Clause 12.2 of the General Terms and Conditions incorporated into the original contract.

The process to implement a new software application product takes a considerable amount of time and effort starting with the County's budgeting and capital outlay approval (CIP) process. After budgetary approval has been granted, the preparation of a new solicitation to search for a replacement product would begin with identification of technical and performance requirements needed. The length of the solicitation process depends on the technical complexity and requirements desired in a replacement software. A typical IT software replacement project from start to finish could take up to a minimum of six (6) months or longer depending on the scope and requirements needed from the replacement software application. Allowing renewal of existing software maintenance contracts for the next five (5) years with a five (5) year option for renewal will provide County staff with sufficient time to develop and release a solicitation for a new software application in the future.

The IT Department wishes to continue contracting with this vendor until such time that this proprietary software application is replaced with a new product. Funding for proprietary license renewal is included in the IT Department's annual budgeting process for materials and services category.

**Federal and Statutory Requirements (optional) N/A**

**Recommendation**

The Information Technology Department requests that the County consider approval of this Sole Source Procurement for the renewal of Innotas software application licenses for a five (5) term at a cost of \$150,000 with an option to renew for an additional five (5) year period.

**Attachments**

Sole Source Justification (3/30/16) one year approval  
Contract with Innotas dated 3/24/11



Planview  
 111 Sutter Street, Suite 300  
 San Francisco, CA 94104  
 Tel: (415) 263-9800 Fax: (415) 795-7228

Order Number	KL20161228	Created Date	2/2/2017
Prepared By	Katie Lee	Expiration Date	3/17/2017
Account Name	Marion County - Oregon	Contact Name	Vicki Thaler
Billing Address	451 Division Street NE Salem, OR 97301 United States	Email	vthaler@co.marion.or.us
		Phone	(503) 584-4734
Commencement Date	4/1/2017	Contract Term	1 Year
End Date	3/31/2018	Payment Terms	Net 30
		Billing Frequency	Up front

License Fee includes production instance, web services API, all upgrades, support and maintenance.

As an amendment to the General Terms and Conditions referenced below, Innotas agrees to the following: Client agrees to defend, indemnify and hold harmless Innotas, its officers, agents and employees from damages arising out of the tortious acts of Innotas, its officers, agents and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300 and the Oregon Constitution, Article XI, Section 7.

Product Code	Product	License Term	Quantity	List Price	Sales Price	Total Price
2575	Innotas Full User	Recurring	31.00	\$660.00	\$589.86	\$18,285.66
2581	Innotas Sandbox (10% of License Fees)	Recurring	1.00	\$0.00	\$2,524.57	\$2,524.57
2576	Innotas Time User	Recurring	29.00	\$240.00	\$240.00	\$6,960.00
Total Recurring Fee						\$27,770.23
Total One Time Fee						\$0.00
Total Price						\$27,770.23

*This legally binding Order Form is governed by the Planview General Terms and Conditions as set forth at <http://www.innotas.com/Generalterms/InnotasGeneralTerms.pdf> (the "General Terms"), which are hereby incorporated into this Order Form by reference. Client's signature below constitutes acceptance of those General Terms. In the event of a conflict between the General Terms and this Order Form, this Order Form shall control.*

Marion County - Oregon

Planview Delaware, LLC (Planview)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_





# INTERMEDIATE SOLE SOURCE JUSTIFICATION

Date: May 16, 2016

To: Finance Contracts and Procurement Manager and Chief Administrative Officer

From: Tom Frey, IT Director and Vicki Thaler, IT Management Analyst

RE: Sole Source Justification for Innotas Software TuneUp



Justification & Written Findings (as outlined in MCPCR 20-0275):

In March 2011 the Innotas software was purchased as a management tool for the Information Technology (IT) department for the recording, reporting and analysis of technical support and professional effort by IT staff. As stated in the incorporated General Terms and Conditions, section 3, of the original Professional Services Agreement (copy attached), the granted use of the Innotas intellectual property license specifies that Innotas retains all rights of ownership as the developer and copyrighted owner of the application and all its components, and no other party will copy or modify any part of the software application. The desired upgrades, technical configuration improvements and system administration support and/or training is to be conducted by Innotas technical personnel to re-align the implementation configuration to more effectively support the operating business processes of the Information Technology department.

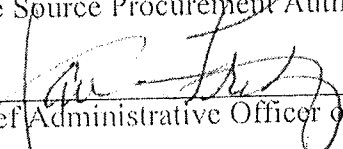
Approval of this sole source procurement would allow for the efficient utilization of existing goods and services as described in the Marion County Public Contracting Rules in Section 20-0275(2)(a).

Based on the information provided, the Information Technology department requests authorization to issue a sole source contract or purchase order to Innotas, Inc. for the term of May 18, 2016 through June 30, 2016 with a not to exceed value of \$2,250.00.

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Finance has reviewed your sole source justification. Sufficient documentation has been provided to justify this as a sole source procurement under Marion County Public Contracting Rules Section 20-0275. For federal awards, sufficient documentation has been provided to meet the federal criteria as stated at 2 CFR 200.320(f) to justify a sole source procurement.

Sole Source Procurement Authorized:

  
Chief Administrative Officer or Designee

6/6/16  
Date

  
Reviewed by Contracts and Procurement

June 2, 2016  
Date

\* Adding to the existing Sole Source for add'l services to be performed.

Finance has reviewed your sole source justification. Sole Source justification does not meet the requirements under Marion County Public Contracting Rules Section 20-0275 or 2 CFR 200.320(f) for approval.

Reason: \_\_\_\_\_  
\_\_\_\_\_

Sole Source Procurement Denied:

\_\_\_\_\_  
Chief Administrative Officer or Designee Date

\_\_\_\_\_  
Reviewed by Contracts and Procurement Date

# Marion County OREGON

## PERSONAL/PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is by and between Marion County (COUNTY) and INNOTAS, INC. (CONSULTANT). Whereas COUNTY has need of the services which CONSULTANT has agreed to provide; now therefore, in consideration of the sum not to exceed \$ 49,220.00 to be paid to CONSULTANT by COUNTY, CONSULTANT agrees to perform between date of: Completion of this agreement, April 2011 and April 2012 (one-year duration), inclusive, the following specific personal and/or professional services: (attach additional information if appropriate or necessary)

Initial purchase of ten (10) Full User License of Innotas Project/Portfolio Management software @ \$4,920.00; FastTrack Implementation (remote) services @ \$20,000.00; and subsequent purchase of additional 45 User License @ \$45/user/month. See attached Order Form and Statement of Services, hereto attached and incorporated. *The software license will be governed by the order form*

Annual support maintenance to renew, per item 12.2 of General Terms and Conditions (hereto attached and incorporated).

This Agreement shall be governed by the laws of the State of Oregon.

Confidential Information (referenced in Section 4 of attached General Terms and Conditions) shall be subject to the Oregon Public Records law (ORS 192). In the event of conflict between the terms of this Agreement and the attached General Terms and Conditions, this Agreement shall take precedence.

The order of services shall be initiated by COUNTY. The COUNTY is not obligated to expend all or any lesser amount authorized under this agreement.

Payment Terms: (lump sum, monthly installments, progress payments, etc.) Payment by Invoice annually in advance for license fees & maintenance; one-time at commencement for implementation services, per Order Form.

### Terms & Conditions:

1. **WHOLE AGREEMENT.** This AGREEMENT is the complete and exclusive statement of the AGREEMENT between the Parties relevant to the purpose described and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of the AGREEMENT.

2. **WRITTEN NOTICE.** Any notice of termination or other communication having a material effect on this AGREEMENT shall be served by U.S. Mail on the signatories listed.

3. **GOVERNING LAW/VENUE.** This AGREEMENT shall be governed by the laws of the State of Oregon. Any action commenced in connection with this AGREEMENT shall be in the Circuit Court of Marion County. All rights and remedies of the COUNTY shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the COUNTY according to law.

4. **COMPLIANCE.** The CONSULTANT shall comply with all applicable Federal, State and local laws, rules and regulations. All provisions of ORS 279B (Public Contracts and Purchasing) are incorporated herein to the extent applicable to personal/professional service agreements.

5. **JUDICIAL RULINGS.** If any provision of this AGREEMENT as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this AGREEMENT or the validity or enforceability of the AGREEMENT.

6. **INDEPENDENT CONTRACTOR.** The CONSULTANT, in carrying out the services to be provided under this AGREEMENT, is acting as an "independent CONSULTANT" and is not an employee of COUNTY, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this AGREEMENT. As an "independent CONSULTANT", CONSULTANT will not receive any benefits normally accruing to COUNTY employees unless required by applicable law. Furthermore, CONSULTANT is free to contract with other parties for the duration of the AGREEMENT.

7. **INDEMNIFICATION.** The CONSULTANT shall save harmless, indemnify, and defend the COUNTY for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from CONSULTANT's performance of or failure to perform the obligations of this AGREEMENT to the extent same are caused by the negligence or misconduct of CONSULTANT or its employees or agents.

8. **INSURANCE.** The CONSULTANT shall maintain at all times commercial general liability insurance, property damage/automobile insurance, and medical/professional malpractice if applicable, covering its activities and operations under this Agreement. The CONSULTANT SHALL name the COUNTY, its officers, agents and employees as additional insureds for general liability and property damage insurance coverage and a separate written Endorsement shall be issued by the company showing the COUNTY as an additional insured and containing a 30-day Notice of Cancellation endorsement. Such insurance shall be in the forms and amounts not less than set forth in ORS 30.270: as specified in the attached Exhibit A, Insurance Requirements. All insurance shall be evidenced by a Certificate of Insurance provided to the COUNTY, indicating coverages, limits and effective dates, by an insurance company licensed to do business in the State of Oregon. Some, or all, of the required insurance may be waived or modified if approved by the COUNTY's Contracts Officer.

Waiver is requested as follows:

Contracts Officer Initial \_\_\_\_\_ Implementation & Support via electronic/phone connections \_\_\_\_\_  
Comments \_\_\_\_\_

 CONSULTANT's initials

9. **WORKERS' COMPENSATION.** The CONSULTANT shall comply with ORS 656 for all employees who work in the State of Oregon. The CONSULTANT shall obtain and maintain at all times during the term of this contract, workers' compensation insurance with statutory limits and employers' liability insurance. CONSULTANT shall provide the COUNTY with evidence that it is a carrier-insured or self-insured employer in full compliance with the requirements of ORS Chapter 656, or that it employees no persons subject to the requirements of ORS 656, Workers' Compensation Insurance,

10. **NONDISCRIMINATION.** The CONSULTANT agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, no qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

11. **TERMINATION OF AGREEMENT.** The AGREEMENT may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
- c. The COUNTY may terminate all or part of this agreement for the following reasons:
  1. If the consultant fails to provide services, or fails to meet the performance standards as specified in this agreement (or subsequent modifications of this agreement), within the time specified herein or any extension thereof. Termination under this provision may be immediate.
  2. If the consultant fails to start services on the date specified by Marion County in this agreement or subsequent modifications to this contract. Termination under this provision may be immediate.
  3. Failure of the consultant or Marion County to comply with the provisions of this agreement and all applicable federal, state, and local laws and rules may be cause for termination of this contract.

Such termination shall be without prejudice to any obligations or liabilities of either party accrued to such termination.

If this AGREEMENT is terminated by either party, for reasons other than breach of contract, the COUNTY agrees to pay to the consultant all costs and expenses associated with services satisfactorily provided to the effective date of termination.

12. SUBCONTRACTING/NONASSIGNMENT. No portion of the AGREEMENT may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the COUNTY.

13. SURVIVAL. The terms, conditions, representations and all warranties contained in this AGREEMENT shall survive the termination or expiration of this AGREEMENT.

14. FUNDING. In the event the Board of Commissioners of the COUNTY reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the CONSULTANT agrees to abide by any such decision including termination of service.

15. STANDARD OF SERVICES AND WARRANTY. The CONSULTANT agrees to perform its services with that standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that the CONSULTANT must perform the services based in part on information furnished by the COUNTY and that the CONSULTANT shall be entitled to rely on such information. However, the CONSULTANT is given notice that the COUNTY will be relying on the accuracy, competence and completeness of the CONSULTANT'S services in utilizing the results of such services. The CONSULTANT warrants that the recommendations, guidance and performance of any person assigned under the AGREEMENT shall be in accordance with professional standards and the requirements of the AGREEMENT.

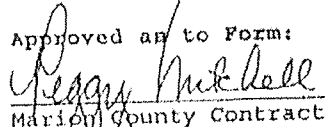
16. COUNTY PRIORITIES. The CONSULTANT shall comply promptly with any requests by the COUNTY relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

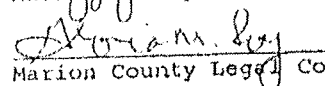
17. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to the COUNTY by CONSULTANT shall become the sole and exclusive property of the COUNTY. All material prepared by CONSULTANT under this AGREEMENT may be subject to Oregon's Public Records Laws.

18. TAX COMPLIANCE CERTIFICATION. CONSULTANT hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of CONSULTANT'S knowledge, CONSULTANT is not in violation of any of the tax laws described in ORS 305.380(4).

MARION COUNTY

  
Department Director 3/24/11  
date

Approved as to Form:  
  
Marion County Contracts 3/28/11  
date

  
Marion County Legal Counsel 3/30/11  
date

CONSULTANT

  
Signature Kevin Kern  
President and CEO

Printed Name Kern

Title

Tax ID #

Corporation  Partnership

Sole Proprietor

Other



# Order Form

118 2nd Street, Suite 300  
 San Francisco, CA 94105  
 Tel: (415) 263-9800 Fax: (415) 263-9801

CONFIDENTIAL

Date: 2/17/2011  
 Order #: 2011162  
 Client ID:

Client: Marlon County, Oregon  
 Billing Address:  
 555 Court St. NE, Room 5247  
 Salem, OR 97309

Name: Grace McDonald  
 Phone: (503) 365-3191  
 Email: gmcdonald@co.marlon.or.us

Offer valid until: 2/28/2011  
 Prepared by: Denise Kuvelis

Comments:

This Order consists of: 1) User Fees to license the Application, payable annually in advance, and 2) FastTrack, a one-time fee due on the Commencement Date.

**ANNUAL FEES**

TERM LENGTH	COMMENCEMENT DATE	END DATE	PAYMENT TERMS		
One (1) Year	28-Feb-11	28-Feb-12	Paid Annually - Net 30		
NO OF USERS	DESCRIPTION OF USER OR FEE	MONTHS	\$ / MONTH / USER	TOTAL	
10	Full User	12	\$ 45	\$	5,400
				\$	
				\$	
				\$	
ANNUAL FEE SUBTOTAL				\$	5,400
DISCOUNT				\$	(480)
ANNUAL FEE TOTAL				\$	4,920

**ONE TIME FEES**

DESCRIPTION	AMOUNT
FastTRACK Support	\$ 20,000
ONE-TIME FEE TOTAL	\$ 20,000

**ORDER SUMMARY**

DESCRIPTION	AMOUNT
ANNUAL FEE TOTAL	\$ 4,920
ONE-TIME FEE TOTAL	\$ 20,000
TOTAL FEES DUE ON COMMENCEMENT DATE	\$ 24,920

This legally binding Order Form is governed by the Innotas General Terms and Conditions as set forth at [www.innotas.com/generalterms](http://www.innotas.com/generalterms) (the "General Terms"), which are hereby incorporated into this Order Form by reference. Client's signature below constitutes acceptance of those General Terms. In the event of a conflict between the General Terms and this Order Form, this Order Form shall control.

Marlon County, Oregon  
 Name: Grace McDonald  
 Signature: [Signature]  
 Title: IT Manager  
 Date: 3/31/11

Innotas, Inc., a California Corporation  
 Name: Kevin Kern  
 Signature: [Signature]  
 Title: President and CEO  
 Date: Innotas



**INNOTAS™**

Cloud Solutions for IT Management

Statement of Services

FastTrack Implementation Service

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## 1.0 Introduction

The following statement of services captures the understanding and scope of services for implementing the Innotas software solution with FastTrack.

FastTrack objectives are:

- Rapidly configure and launch Innotas to begin product adoption and realizing value based on our customer's objectives and timeframe
- Enable our customer to take ownership of the software solution, product and configuration
- Provide business and product best practices for using the Innotas application

## 2.0 Approach

Using a well-defined, proven methodology and delivery framework, Innotas Implementation Services are designed to get our customers up and running quickly in a matter of weeks. Innotas' experienced Engagement Managers will deliver the implementation through a structured workshop approach, best practices, pre-configured content, supplied by both industry and software leaders.



We employ a four-step approach to launch your IT Management solution through a set of structured and scheduled workshops. Our Engagement Managers work with our customers to drive configuration decisions, system configuration activities, and team training. Automated accelerators are used rapidly to initiate customer instances with pre-configured content then we load customer data.

### The lists of workshops are:

- Planning
- Foundation
- Project Inventory & Management
- Application Inventory & Management
- Resource Management
- Demand Management
- Time Management
- Executive Reporting and Dashboards
- Configuration, Administration, Security
- Integration

### Each Workshop includes:

- Definition of Capability (Functionality)
- Business Decisions and Questions
- Configuration Decisions and Questions
- Configuration Activities
- Training

Our experienced Implementation Services team works with our customers to tailor a workshop schedule to meet the customer's objectives and timeframe for launching Innotas.



### 3.0 Scope

The scope of the FastTrack implementation will include the configuration of the following Innotas capabilities detailed below. The scope may include all or a sub-set of the capabilities detailed depending upon Customer objectives and requirements. The Innotas Engagement Manager will work closely with the Customer to identify the explicit capabilities, timeframe, and target audience during the planning workshop.

#### *Innotas Foundation*

- Innotas instance creation and set-up
- Foundation set-up:
  - Organization, Business Units, Accounts, Departments, Programs
- Standard role and resource definition and set-up
- Time management standards
- Standard lookup lists and status values
- Resource role, skills inventory
- Creation of account on-boarding data load worksheet:
  - Resources, Rates, Users, Projects, Applications

#### *Request Management*

- New project initiation request
- Project change request
- Application work requests
- Application change requests
- Stage-gate approval processes for each request type
- Demand dashboard and reporting

#### *Project and Program Management*

- Project information & framework
- Project health defaults
- Project templates
- Issue, risk management
- Team staffing management
- Estimates, Budgets, Schedules
- Project Workbench standards
- Project status dashboard and reporting

#### *Portfolio/Application Management*

- Portfolio/Application information & framework
- Account (Portfolio) relationship model
- Portfolio/Application Inventory
- Portfolio/Application status dashboard and reporting

#### *Resource Management*

- Resource capacity model
- Resource inventory and assignment
- Resource capacity and demand reporting

#### *Time Management*

- Time approval process
- Time approver setup
- Time user setup
- Time management and administration

The FastTrack service incorporates training and knowledge transfer throughout the entire implementation to the Customer's core implementation team. Innotas will work with the Customer to design a deployment and training plan suitable to the Customer's environment and requirements. The Customer will be responsible for delivering deployment training to end users. Innotas will provide continued product training and support to the core implementation team during deployment and end user training.

In addition to standard product help and tutorials available in the product, Innotas will deliver the following training and enablement as part of the FastTrack service:

- Product overview and training sessions for the core implementation team as part of each defined workshop
- Hands-on product training and coaching during workshop delivery through participation in set-up and validation of the configuration, reports, and dashboards.
- Quick Reference Guides for the following functional areas:
  - General Foundation and Administration
  - Request Management
  - Project and Program Management
  - Portfolio Management
  - Time Management

#### 4.0 Roles and Responsibilities

The engagement will require the efforts of several resources from the customer and Innotas. Roles and time commitments will be tailored as the project progresses, and roles may be combined.

<b>Role</b>	<b>Responsibility</b>	<b>Commitment (% Time / Est. Hrs)</b>
Sponsor (client)	<ul style="list-style-type: none"> <li>▪ Executive staff member sponsoring the project</li> <li>▪ Sets overall project goals and objectives</li> <li>▪ Sponsors organizational and process adoption</li> </ul>	3%  6-10 hours
Functional Owner (client)	<ul style="list-style-type: none"> <li>▪ Implementation Manager</li> <li>▪ Day-to-day functional owner of the Innotas application</li> <li>▪ Identify and manage implementation team members</li> <li>▪ Schedule and assist with facilitation of workshop sessions</li> <li>▪ Review set-up: portfolio, project execution, resources management, and dashboard set-up</li> <li>▪ Handle day-to-day analysis, questions, issue resolution</li> <li>▪ Deployment training to end users</li> <li>▪ Job Aide development (customer specific)</li> </ul>	25% - 50%  60-120 hours
Core Implementation Team Members (client)	<ul style="list-style-type: none"> <li>▪ Initial application users / target audience</li> <li>▪ Validate initial data load and set-up</li> <li>▪ Review set-up: portfolio, project execution, resources management, and dashboard set-up</li> <li>▪ Participate in delivering deployment training</li> </ul>	25%  60 hours
Engagement Manager (Innotas)	<ul style="list-style-type: none"> <li>▪ Primary point of contact for client Functional Owner and Core Deployment Team</li> <li>▪ Innotas Workshop delivery</li> <li>▪ Innotas set-up and configuration</li> <li>▪ Core Deployment Team training</li> <li>▪ Assist with deployment planning</li> <li>▪ Post-deployment adoption status and coaching</li> </ul>	Dedicated EM

## 5.0 Assumptions

1. Customer will actively participate by providing subject matter expertise and insight into customer specific methodology, standards, and business requirements.
2. Customer is responsible for setting direction and decision making for the project team and is responsible for the business processes being implemented. Customer will be responsible for organization and process changes.
3. The project team will have a mix of subject matter experts who will participate and provide inputs into requirements and business processes.
4. Customer staff will actively participate in the configuration effort as part of knowledge transfer activities.
5. Customer will validate configurations, and participate in solution configuration validation. This approach will help Customer achieve adoption of the configurations and management of the product and configurations post-launch.
6. Innotas may reuse existing best practice templates from Innotas' knowledge base for configuration and best practices.
7. An Innotas Project Plan will be the tool that both Client and Innotas will use to monitor and track completion of engagement activities. As the project progresses, this plan will be used to evaluate if the proper resources are assigned to the various project workshops.

## 6.0 Appendix

Following are the standard activities, deliverables, and milestones of the Innotas FastTrack service.

I PLAN		
Outline	Title	Type
1	Plan	
1.1	Planning Workshop	Workshop
1.1.1	Goals and Objectives	Activity
1.1.2	Team Members Identified	Activity
1.1.3	Timeline and Milestones Review	Deliverable
1.1.4	Workshops Scheduled	Activity
1.1.5	Delivery Schedule Complete	Milestone
II BUILD		
Outline	Title	Type
2	Build	
2.1	Foundation Workshop	Workshop
2.1.1	Innotas Client Instance generate w/ Foundation Data	Deliverable
2.1.2	Innotas Orientation and Foundation Walk-through	Activity
2.1.3	Hierarchy Modeled	Deliverable
2.1.4	Resource Setup Workshop	Workshop
2.1.4.1	Discuss Organization Roles	Activity
2.1.4.2	Resource Setup	Deliverable
2.1.4.3	Initial User Setup	Deliverable
2.2	Project Inventory & Management Workshop	Workshop
2.2.1	Project Info Fields	Activity
2.2.2	Project Status Reporting Fields	Activity
2.2.3	Project Issues/Risks	Activity
2.2.4	Project Task Workbench	Activity
2.2.5	Project Cost Management	Activity
2.2.6	Project Templates	Activity
2.3	Application Inventory & Management Workshop	Workshop
2.3.1	Application Info Fields	Activity
2.3.2	Application Field Set-up	Activity
2.4	Resource Management Workshop	Workshop
2.4.1	Allocations and Scheduling	Activity
2.4.2	Top-Down and Bottom-Up Planning	Activity
2.4.3	Resource Capacity and Demand	Activity

2.5	Time Management Workshop	Workshop
2.5.1	Summary Level vs. Task Level Tracking	Activity
2.5.2	Scheduling Resource for Time Tracking	Activity
2.5.3	Time and Expense Entry	Activity
2.6	Demand Management Workshop	Workshop
2.6.1	Client Approval Process	Activity
2.6.2	Define Approval Requirements	Activity
2.6.3	Set-up Approval Form	Activity
2.6.4	Set-up Approval Process	Activity
2.7	Executive Reporting and Dashboard Workshop	Workshop
2.7.1	Review existing & modify, create reports	Activity
2.7.2	Setup Dashboards	Deliverable
2.8	Configuration, Administration, and Security Workshop	Workshop
2.8.1	User Security & Roles	Activity
2.8.2	User Set-up	Deliverable

**III LAUNCH**

Outline	Title	
3	Launch	
3.1	Training	Activity
3.1.1	Organize Training Sessions by Users/Roles	Activity
3.1.2	Create list of End Users To Train	Deliverable
3.1.3	Create Training Materials by Functionality/Role	Activity
3.1.4	Train and Enable End Users	Deliverable
3.2	Send Launch Communication	Deliverable
3.3	Readiness Assessment Go/No Go	Activity
3.4	Finalize Data for Go-Live	Deliverable
3.5	Go Live	Milestone

**IV MANAGE**

Outline	Title	
4	Manage	
4.1	Review Account Management and Support Procedures	Activity
4.2	Transition to Account Management	Milestone

These are the INNOTAS GENERAL TERMS AND CONDITIONS, (together with the Order Form, the "General Terms") between Innotas, Inc., a California Company ("Innotas") and your company ("Client" or "You"). By signing an Order Form You agree to be legally bound by these General Terms, and as they may be amended by Innotas from time to time (in accordance with Section 13). You further agree that You are a duly authorized signatory of Your company empowered to legally bind Your company.

1. **DEFINED TERMS.** Any terms not defined in these General Terms but defined in the Order Form shall have those definitions set forth in the Order Form.

"**Application**" is a database and software web services application offered to the Client over the Internet that includes certain management functions that have been designed specifically for project-oriented organizations. The Application is located at [www.innotas.com](http://www.innotas.com) (the "Site"), and includes all modifications, customizations, enhancements, revisions, updates, upgrades and documentation that Innotas may make available from time to time. Applications do not include interfaces to other software programs.

"**Order Form**" means the document setting forth prices and quantities User Fees for software licenses and/or Professional Services, signed by both parties and a legally binding part of these Innotas General Terms and Conditions.

"**User**" refers to each employee, consultant, client or other agent of Client who accesses the Application on Client's behalf.

2. **TERM.** The term of these General Terms shall commence on the Commencement Date and shall continue until terminated pursuant to the provisions of Section 12 of these General Terms. If Innotas commenced work for Client prior to the Commencement Date of these General Terms, all provisions of these General Terms shall apply to such activities, including but not limited to Section 3 (Intellectual Property), Section 4 (Confidential Information), and Section 10 (Payments).

### 3. **INTELLECTUAL PROPERTY**

3.1 **License.** Subject to these General Terms, Innotas hereby grants to Client a nonexclusive, revocable, nonsublicensable license to access and use the Application during the Term solely for its internal business operations. Client is solely responsible for providing all telecommunications, computer and other equipment necessary for accessing the Application. Innotas retains the right, in its sole discretion and without prior notice or liability, to restrict or terminate access to the Application by Client and/or particular Users if Client and/or its Users materially breach the terms of this Agreement, or through use of the Application that violates any applicable federal, state, local or international laws or regulations, or the rights of any third party.

3.2 **Ownership.** Innotas retains all rights not expressly granted to Client in these General Terms. Without limiting the generality of the foregoing, Client acknowledges and agrees that: (i) except as specifically set forth in this Agreement, Innotas have all rights, title and interest in and to the Application, all components thereof, all content which Innotas makes available to Client for downloading and all intellectual and industrial property rights embodied therein or pertaining thereto, including without limitation copyrights, patent rights, trademarks and trade names, and trade secrets; (ii) any configuration or deployment of the Application shall not affect or diminish Innotas' rights, title, and interest in and to the Application; and, (iii) Client shall not limit Innotas in any way from developing, using, licensing, distributing, modifying, or otherwise freely exploiting the Applications, any other materials provided by Innotas, or any modifications, enhancements, improvements or derivative works thereof, or permitting third parties from so doing. To the extent Client or its Users creates any derivative works or improvements to the Application, Client, on behalf of itself and its Users, hereby assigns all right, title and interest to such derivative works or improvements, including all intellectual property rights, to Innotas.

3.3. **Work Products.** All work products resulting from this Agreement that are in any way related to the Application or its use remain the exclusive property of Innotas. To the extent Client or its Users participate in the creation or development of improvements to the Application, Client, on behalf of itself, its employees, and its Users hereby assign all right, title and interest to such improvements, including all intellectual property right, to Innotas.

3.4 **Restrictions on Use.** Except as otherwise specifically permitted under this Agreement, Client shall not, nor will Client permit any third party to: (i) copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver or otherwise transfer the Application to any third party in whole or in part provided that Client may copy Innotas' documentation as needed for use by its Users; (ii) derive or attempt to derive the source code of any portion of the Application by any means; (iii) reverse engineer, decompile, disassemble, or translate the Application or any part thereof; (iv) transfer any of the Application components to any other person, entity, computer, computer network, or other device; or, (v) upload, post, mail, publish, transmit or distribute in any way the Application, any component of the Application or derivative works based thereon.

3.5 **No Trademark License.** No license, right or interest in the trademarks, trade names or service mark of either party or its licensor is granted hereunder, except as either party may agree in writing.

### 4. **CONFIDENTIAL INFORMATION.**

4.1 **Confidential Information.** By virtue of this Agreement, either party may come into contact with the other party's non-public or proprietary information ("Confidential Information"). For purposes hereof, Confidential Information shall include, without limitation,

any information or materials supplied to, obtained by or observed by either party or its employees, agents, consultants or subcontractors including proprietary software, source code documents, financial information, documentation, data, benchmark tests, specifications, customers, marketing strategies, business practices and any other proprietary information supplied to one party by the other and identified as proprietary or confidential, user identification and passwords, and account information. Client data created by or stored in the Application ("Client Data"), the terms of any Order Form, and these General Terms themselves are all considered "Confidential Information." Each party shall hold the Confidential Information of the other party in strict confidence and not disclose the Confidential Information to third parties nor use for any purpose not authorized herein, nor permit access to Confidential Information, except to those of its employees or authorized representatives having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein. Upon learning of any unauthorized use or disclosure of a disclosing party's Confidential Information, the other party shall immediately notify the disclosing party.

4.2 Exceptions. The above restrictions of Section 4.1 shall not apply to: (a) information that becomes, through no act or fault of the party receiving the Confidential Information (the "Receiving Party"), publicly known or generally known in the relevant industry; (b) information received from a third party not obligated under a confidentiality agreement with the party disclosing the Confidential Information (the "Disclosing Party"); (c) information independently developed by either party without reference to the Confidential Information; (d) information required to be disclosed by law or court or governmental agency order, provided the party gives prompt notice of such requirement to the other party; or, (e) disclosures to a professional advisor under a duty of confidentiality.

4.3 Ownership and Return of Confidential Information. All Confidential Information shall remain the property of the Disclosing Party, including Client Data. Upon written request of the Disclosing Party, the other party shall promptly return to the Disclosing Party all documents and other tangible materials representing the disclosing party's Confidential Information, together with all copies thereof (at Disclosing Party's expense). Upon request by Client made within thirty (30) days of the effective date of termination, Innotas will make available to Client for download a file of Client's data in comma separated value (csv) format. After such 30-day period, Innotas shall have no obligation to maintain or provide any of Client's data and shall thereafter, unless legally prohibited, delete all of Client's data in Innotas's systems or otherwise in Innotas' possession or control.

## 5. ADDITIONAL TERMS.

5.1 User Overages. If at any point during the Term, the Client activates additional User(s) totaling more than the number specified in the Order Form, or changes from one User Type that is more expensive than another, the additional User(s) will be treated as new Users and subject to Innotas' then-current list price for the User Type added, or, in the case of an upgrade of User Type, to the difference between the User Fee set forth in the Order Form and Innotas' then-current list price for the upgraded User Type. The new User(s) will be billed to the Client upon its activation on a prorated basis for the time remaining in the Term. Such additional Users shall also be added to a Renewal Term (as defined in Section 12.2 hereof) if applicable.

5.2 Users Ordered Under Prior Agreements. It is expressly agreed that any Users ordered pursuant to any other agreement with Innotas, Inc., or any of its predecessors in interest, shall now be subject to the terms of this Agreement as though ordered under the terms of this Agreement.

5.3 Service Levels, FastTRACK, and Web Services. The details of the Service Levels, FastTRACK and Web Services offerings are available at <http://innotas.com/service/>.

5.4 System Availability. Details of system availability are set forth in The Attachment to these General Terms.

## 6. DISCLAIMER OF WARRANTY.

THE INNOTAS APPLICATION, ACCESS THERETO, AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND INNOTAS AND ITS AFFILIATES AND AGENTS: (A) DO NOT MAKE, AND HEREBY EXPRESSLY DISCLAIM, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (B) DO NOT WARRANT THAT ACCESS TO THE INNOTAS APPLICATION WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE THROUGH THE INNOTAS APPLICATION IS FREE OF VIRUSES OR OTHER HARMFUL CONTENTS OR COMPONENTS; (C) SHALL IN NO EVENT BE LIABLE TO CLIENT OR ANYONE ELSE FOR ANY INACCURACY, ERROR OR OMISSION IN, OR LOSS, INJURY OR DAMAGE (INCLUDING LOSS OF DATA) CAUSED IN WHOLE OR IN PART BY, OR FAILURES, DELAYS OR INTERRUPTIONS OF THE INNOTAS APPLICATION. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES. IN SUCH JURISDICTIONS, INNOTAS' LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## 7. LIMITATION OF LIABILITY.

7.1 Exclusion of Consequential Damages. EXCEPT FOR BREACHES OF SECTION 4 HEREIN, IN NO EVENT SHALL CLIENT, INNOTAS OR INNOTAS' SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, provided however, the foregoing shall not be construed to limit either party's obligations as set forth in Section 8; provided further however, that in the event Client gives access to the Application to non-authorized Users, Innotas shall be entitled to recover the full amount of any license fees that would relate to such Users

7.2 Limitation of Direct Damages. Except for its obligations to indemnify Client under Section 8, or for any breach of its nondisclosure obligations (Section 4), the aggregate and cumulative liability of Innotas and its suppliers for damages hereunder shall in no event exceed the amount of fees paid by Client for the previous twelve (12) months under this Agreement. Except for its obligations to indemnify Innotas under Section 8, or any breach of its obligations to comply with the License grant (Section 3.1), the Restrictions on Use (Section 3.4), its payment obligations (Section 10), and its non-disclosure obligations (Section 4), Client's aggregate and cumulative liability for damages hereunder shall in no event exceed the amount of fees paid by Client under this Agreement.

## 8. INDEMNIFICATION.

8.1 General Indemnity. Each party (an "Indemnitor") shall defend and indemnify the other party and its employees, officers, directors and agents (the "Indemnitee") against all damages for bodily injury, death, or damage to real or tangible personal property, proximately caused by the Indemnitor in the course of performing this Agreement, provided that: (i) the Indemnitor receives prompt written notice of the claim from the Indemnitee under this Section; (ii) the Indemnitor has the right to control the defense of such claim and any related settlement negotiations; and, (iii) the Indemnitee provides to the Indemnitor, at the Indemnitor's request and expense, with the assistance, information and authority necessary to perform the Indemnitor's obligations under this Section.

8.2. Intellectual Property Indemnity. If a third party makes a claim against Client that the Application directly infringes any patent, copyright, or trademark or misappropriate any trade secret ("IP Claim"). Innotas will: (i) defend Client against the IP Claim at Innotas' cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Client by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Innotas arising out of such IP Claim; provided that: (i) Client promptly notifies Innotas in writing no later than thirty (30) days after Client's receipt of notification of a potential claim; (ii) Innotas may assume sole control of the defense of such

claim and all related settlement negotiations; and, (iii) Client provides Innotas, at Innotas' request and expense, with the assistance, information and authority necessary to perform Innotas' obligations under this Section. Notwithstanding the foregoing, Innotas shall have no liability for any claim of infringement based on: (a) the use of a superseded or altered release of the Application if the infringement would have been avoided by the use of a current unaltered release of the Application; (b) the modification of the Application; (c) the use of the Application other than in accordance with the documentation and this Agreement; or, (d) any materials or information provided to Innotas by Client, for which Client shall be solely responsible.

If the Application is held to infringe or is believed by Innotas to infringe, Innotas shall have the option, at its expense, to either replace or modify the Application to be non-infringing, or to obtain for Client a license to continue using the Application. If it is not commercially reasonable to perform either of the foregoing options, then Innotas may terminate the Application license and refund the User Fees paid for the Application. This Section 8.2 states Innotas' entire liability and Client's exclusive remedy for any claim of infringement.

## 9. SERVICES AND FEES.

9.1 Fees. All fees and amounts due to Innotas shall be set forth in one or several Order Forms that the parties may from time to time execute.

9.4 Travel Expenses. All incurred travel related expenses and other out-of-pocket expenses associated with fulfilling the requirements of each Order Form (the "Expenses") will be billed to Client in accordance with standard Innotas travel policy, which is available for Client's reference at Client's request.

10. PAYMENTS. All fees are in U.S. dollars, are non-refundable, and do not include any applicable taxes, which are the sole responsibility of the Client. All payments are due within thirty (30) days from the date of invoice. All payments not made within such thirty (30) day period shall be Delinquent Payments. Late fees shall accrue on all Delinquent Payments at the lesser of (i) 1.5% per month, or (ii) the maximum rate allowed under law. If Delinquent Payments are not made within fifteen (15) days of written notice to Client by Innotas, Innotas may, in its sole discretion, immediately terminate the applicable Order Forms, and Client's access to the Application with no further liability to Client.

## 11. PERSONNEL.

11.1 On-Site Personnel. Innotas personnel physically located at Client's facilities, hereto referred to as "On-Site", shall comply with all reasonable work place standards and policies, applicable to Client's employees, of which Innotas is apprised of in writing in advance by Client, provided they are not inconsistent with Innotas' own business practices. While On-Site Innotas will have reasonable access to use Client's facilities that are necessary to perform the Services and Client will provide reasonable working space to Innotas.



11.2 Non-Solicitation of Employees. Client and Innotas each agree not to solicit the other's employees without prior written consent of the other party.

12. TERMINATION. These General Terms shall continue to be in force until terminated by either party in accordance with this Section 12.

12.1. Termination for Breach. If either party materially breaches these General Terms or an Order Form and such breach is not cured within thirty (30) days after written notice is given to the breaching party, then the other party may, by giving written notice to the breaching party, terminate the applicable Order Form as of the end of such thirty (30) day period or such later date as is specified in such notice of termination.

12.2 Automatic Renewal. Following the end of the Term set forth in an Order Form, unless Client has given Innotas notice of its desire not to renew thirty (30) days prior to the end of the then-current Term, a new Term will automatically renew for the same length of time as the original Term ("Renewal Term"). Any such Renewal Term will be billed in advance at Innotas' then-current list prices for all active Users at the beginning of the Renewal Term.

12.3 Effect of Termination. Upon termination of any Order Form due to Client's breach, Client shall pay all amounts due to Innotas under all Work Orders and shall not be entitled to a refund for any amounts already paid.

### 13. MISCELLANEOUS.

This Agreement shall be governed by the laws of the State of California without reference to its conflict of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. All claims under, or otherwise with respect to, this Agreement shall be brought and maintained in the state and federal courts located in San Francisco, California, USA, and the parties hereby expressly consent (and waive any right to otherwise object) to the exclusive venue and jurisdiction of such courts.

For Client's whose country of incorporation is Canada, Client Data shall not be stored in the United States.

Client may not assign this Agreement, or its rights or duties hereunder, to any third party, in whole or in part, whether voluntarily or involuntarily, by operation of law (e.g., in a statutory merger) or otherwise, without Innotas' prior written consent, which may be granted or withheld in Innotas' reasonable discretion.

All notices must be in writing and delivered personally or sent by overnight courier service to the address indicated in the Order Form, or such other address as either party may indicate by written notice, and will be deemed effective upon the earlier of actual or two business days after deposit with an overnight courier.

If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this

Agreement will be unimpaired, and the invalid term or provision will be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.

In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute.

These General Terms and any Order Forms together constitute the entire, exclusive and final statement of the agreement of the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous representations, proposals, negotiations, discussions, and agreements between the parties regarding the same subject matter, whether oral or in writing, with respect to the Users ordered hereunder or any Users ordered under any other agreement. The waiver or failure of either party to exercise in any respect any rights provided for in these General Terms will not be deemed a waiver of any further right under these General Terms. There are no intended third-party beneficiaries under these General Terms or Order Form.

This Agreement may be executed in counterparts, which taken together shall be considered one original Agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Those provisions which by their nature survive the termination of an Order Form shall survive and the obligations thereof continue for a period of four (4) years following termination.

Innotas may amend these General Terms by posting the changed General Terms at [www.innotas.com/generalterms](http://www.innotas.com/generalterms) and notifying Client of such changes in writing (with email sufficing as a writing). Client hereby consents to the future amendment of these General Terms using the above process.

Except for Client's obligations to make payments as set forth in this Agreement, each party shall be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond its reasonable control and without its fault or negligence. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental laws and regulations imposed after the fact, fire, communication line failures, power failures, earthquakes, floods or other natural disasters (a "Force Majeure Event"). Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of such events.

## ATTACHMENT—SYSTEM AVAILABILITY

**1. SYSTEM AVAILABILITY.** Provided that Client remains current in its payment obligations to Innotas as set forth in the General Terms, Client shall have the right to the system availability provisions set forth herein.

**1.1. Definition of Availability.** "Availability" or "Available" means Client is able to log in to Service. "Unavailable" or "Unavailability" means Client is unable to log in to Service, subject to the following provisions:

**1.2. Scheduled Downtime.** The Innotas system may be inaccessible to Client during Scheduled Downtime. Scheduled Downtime will occur for less than one (1) hour between 10 p.m. and 6 am Central Time and on Saturdays from 6:00 pm to 9:00 pm US Pacific Time. Innotas reserves the right to change the Scheduled Downtime to other non-business hours upon notice to Client. Scheduled Downtime shall not be considered times when the Application is Unavailable.

**1.3 Exceptions to "Unavailability."** In addition to Scheduled Downtime, any period in which Client is unable to use the Service due to the conduct of Client or any circumstances outside of the control of Innotas or its third party providers, including but not limited to the following, shall not be considered times when the system is Unavailable:

(i) a failure or malfunction resulting from scripts, data, applications, equipment, or services provided and/or performed by Client;

(ii) outages initiated by Innotas or its third party providers at the request or direction of Client for maintenance, back up, or other purposes;

(iii) outages occurring as a result of any actions or omissions taken by Innotas or its third party providers at the request or direction of Client;

(iv) outages resulting from Client's equipment and/or third party equipment not within the sole control of Innotas;

(v) events resulting from an interruption or shut down of the Services due to circumstances reasonably believed by Innotas to be a significant threat to the normal operation of the Service, the facility from which the Service is provided, or access to or integrity of Client data (e.g., a hacker or a virus attack);

(vi) outages due to system administration, commands, file transfers performed by Client representatives;

(vii) other activities Client directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, and other force majeure items;

(viii) Client's negligence or breach of its material obligations under this Agreement; and

(ix) lack of availability or untimely response time of Client to respond to incidents that require its participation for source identification and/or resolution.

**1.4 Target System Availability.** The "Target System Availability Level" is the System Availability Level that Innotas plans to meet or exceed during each

calendar quarter. The "System Availability Level" is the number of hours during a particular period that the Service was Available to Client, excluding Downtime (as defined below), divided by the total number of hours during such period (as measured at the end of such period). The Target System Availability Level is 99.5% in any calendar quarter.

## 2. REMEDIES.

### 2.1 Downtime Events.

(a) **User Fee Credit Criteria.** If Client logs a service request providing detail regarding a "Downtime Event" (meaning the sustained inability of the Service to be Available to Client for more than fifteen (15) consecutive minutes) and requests a User Fee Credit within seventy-two (72) hours of such Downtime Event, and the Service Availability Level is below the Target Availability Level, Innotas will issue to Client a User Fee Credit calculated as set forth in this Section 2.1.

(b) **Fractional Credit Calculation.** One "Fractional Credit" will accrue for each Downtime Event lasting between fifteen (15) minutes and one (1) hour and meeting the User Fee Credit Criteria set forth in Section 2.1(a) above, meaning that if the Downtime Event lasts four hours then four Fractional Credits would accrue.

(c) **User Fee Credit Calculation.** A Fractional Credit will be converted into a User Fee Credit by multiplying the Fractional Credit by the pro-rated amount equal to one day of User Fees for the number of Users paid for by Client at the time of the Downtime Event, rounded to the nearest thousandth. For example, if a client had 100 Users at the time of receiving 4 Fractional Credits, those Fractional Credits would be divided by 365 (or 366 in a leap year) and multiplied by 100, entitling the client to 1.096 User Fee Credits.

(d) **User Fee Credit Redemption.** A User Fee Credit is redeemable by Client as one day of User Fees for one User. User Fee Credits can be applied by Client only toward renewals of the Subscription Term at the end of the then-current Subscription Term. Any User Fee Credits that remain unused at the end of a Subscription Term shall be forfeited. A maximum of ten (10) User Fee Credits (the "Maximum Credits") may be accrued by Client in any one calendar quarter.

**2.2 Sole and Exclusive Remedies.** The User Fee Credits described in this Section 2 shall be Client's sole and exclusive remedy and Innotas' sole and exclusive liability for any breach of the obligations set forth in this Attachment.