



## Terms & Conditions for 2Go™ Services

### Definitions

#### **1.1 When starting with a capital letter or in the case of the term “iNovar”, the following terms have the meanings shown:**

- (a) “iNovar” means iNovar Corporation, a company registered in Delaware (FEIN 99-0384479) whose registered office is 10302 Papillon Trace, Johns Creek, GA30022, United States of America.
- (b) “Customer” means the corporate entity that enters the Agreement with iNovar.
- (c) “Party” means Customer or iNovar.
- (d) “Agreement” means the legally binding contract between Parties for the Services consisting of the Customer’s purchase order and the Terms of Service, these terms and conditions, the Schedules and any documents referenced in any of the foregoing, including the licence terms and conditions for any software made available as part of the Services. The Schedules have the highest precedence in the event of conflict between the constituent parts of the Agreement.
- (e) “Schedules” means the service descriptions, the service level agreements and the guidelines for use of the Services all of which are published at [www.inovarcorp.com](http://www.inovarcorp.com) and the prices included in a formal quotation from iNovar to the Customer; or, in the absence of such quotation, the rates and prices published at <http://www.inovarcorp.com>.
- (f) “Services” means the services to be performed by iNovar which the Customer from time to time selects from the list in the Schedules. The Services may include software supplied by iNovar for use solely in connection with the Services.
- (g) “Terms of Service” means iNovar’s acceptable use policy published at <http://www.inovarcorp.com>.
- (h) “Content” means the Customer’s software (including machine images), data, text, audio, video, images, other content and any Customer systems and processes that interact with the Services.
- (i) “Contract Period” means the period as shown in the Agreement.
- (j) “Authorised User” means any party authorised by the Customer to use the Services.
- (k) “Fees” means the amount to be paid by the Customer for the Services calculated in accordance with the Schedules.
- (l) “Intellectual Property” means patents, trade and service marks, trade names, design rights,

topography rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection which have a similar effect to any of the foregoing anywhere in the world.

(m) "Objectionable" means unlawful or false or fraudulent or misleading or offensive or pornographic or obscene or derogatory or discriminatory or racist or defamatory or inflammatory or malicious or threatening or causing nuisance or causing anxiety or unsolicited mass mailing, flooding, mail-bombing, spamming; or infringing iNovar's rights or the rights of third parties or likely to expose iNovar to claims or liability, prosecution or disrepute, or otherwise actionable by any third party.

## **2 iNovar obligations**

2.1 In return for the Fees, iNovar grants the Customer a non-exclusive, non-transferable right to use the Services and to permit Authorised Users to use the Services for the duration of the Agreement.

2.2 iNovar will perform the Services with the skill and care of a competent provider of services of a type similar to the Services and in all material respects in accordance with the applicable service description and service level agreement published in the Schedules. iNovar will use all reasonable efforts to achieve the KPIs; availability targets and respond, restore or fix times and any other service metrics and maintenance regimes set out in the Schedules. Any service credits set out in the Schedules are in full and final settlement of the relevant failure by iNovar. Service credits are used to purchase Services, monetary refunds do not apply. Any service credit balance remaining when the Agreement is terminated becomes null and void.

2.3 iNovar will maintain security measures aligned to ISO27001 and to the IL2 standard.

2.4 iNovar shall not introduce any kind of harmful software, malware, viruses, trojan horses, worms, timebombs or cancelbots into the Services.

2.5 iNovar will adhere to its privacy policy published at [www.inovarcorp.com](http://www.inovarcorp.com). The Customer will ensure that all Authorised Users are aware that the privacy policy applies to the Agreement.

2.6 iNovar warrants that it has all necessary authority, licences, rights, permissions and consents to enter into the Agreement.

2.7 The obligations in this section 2 replace all conditions, representations and warranties which may otherwise be implied by statute, common law or otherwise. The Customer is responsible for selecting the Services appropriate to its needs. iNovar cannot assess whether such Services are suitable for

Customer's purposes.

### **3 Customer obligations**

3.1 In return for the proper performance of the Services, the Customer shall pay the Fees to iNovar in accordance with section 4 below.

3.2 The Customer warrants that it has all necessary authority, rights, permissions and consents to enter into the Agreement and to the Content and to any third party systems or services that it uses in connection with the Services. The Customer will abide by the licence terms and conditions published in the Schedules for all software forming part of the Services. The Customer shall ensure that the licence terms and conditions of all other software used by the Customer in connection with the Services permit such use.

3.3 The Customer shall ensure that all Authorised Users are sufficiently competent to meet the relevant obligations of the Customer set out in the Agreement. The Customer is liable for the actions, omissions and Fees incurred by Authorised Users.

3.4 The Customer shall comply with the Terms of Service and shall not access, store, distribute or transmit any Objectionable Content nor use the Services for any Objectionable activity or purpose.

3.5 The Customer shall not introduce any kind of harmful software, malware, viruses, trojan horses, worms, timebombs or cancelbots into the systems or services of iNovar, its suppliers or customers.

3.6 The Customer must maintain the confidentiality and security of all logon credentials and the details of how to use the Customer's account. The Customer is responsible for all Fees incurred through unauthorised access of its account, unless such unauthorised access is solely caused by iNovar. If the Customer discovers any unauthorised access, it must immediately ask iNovar to suspend the Customer's account in which case the provisions of section 5 shall apply.

3.7 The Customer shall not, and shall ensure that Authorised Users shall not, attempt to circumvent any security measures relating to the Services or infrastructure nor access iNovar's infrastructure except in accordance with the instructions and APIs specified by iNovar.

3.8 The Customer is solely responsible for procuring and maintaining its systems and services from and to the iNovar service boundary. The iNovar service boundary is defined in the Schedules.

3.9 The Customer is solely responsible for the development, operation, maintenance and use of the Content and for compliance with any third party AUP or other policies, regulations or laws relating to

the same. The Customer uses third party products and services in connection with the Services at its sole risk and is liable for any costs incurred by iNovar as a result of the Customer's use of the same.

3.10 The Customer is responsible for properly configuring and using the Services and taking its own steps to maintain appropriate security, protection and backup of the Content, which may include the use of encryption technology to protect the Content from unauthorised access and routine archiving. Unless the Services include back up services, iNovar recommends that the Customer maintains an up to date copy of the Content by other means.

3.11 The Customer is responsible for providing all support to its users and customers. iNovar shall provide support to the Customer for the Services as described in the Schedules but does not provide any support for the Customer's services or systems that interact with the Services.

3.12 The Customer may use the Services to provide services to its own customers but may not subcontract, sublicense, supply or re-sell the Services.

3.13 The Customer accepts that iNovar may be required by law to monitor the Content and use of the Services and to provide details of the same which may include identification of logon credentials and their usage. iNovar shall not be liable for any effect on the Services caused by the obligation to comply with any requests made under any statutory authority. The Customer agrees that without prejudice to sections 2.5 and 9, iNovar may also monitor the Customer's use of the Services and accumulate statistics for purposes connected with the Agreement and so as to be able to develop and improve the Services.

3.14 For the duration of the Agreement and for twelve months thereafter, the Customer shall not solicit the services or employment of any iNovar personnel. This provision does not apply to unsolicited approaches to the Customer or responses to any public recruitment campaign.

#### **4 Fees and payment**

4.1 The rates and charges comprising the Fees are fixed for the first Contract Period.

4.2 On or after the end of the first Contract Period, iNovar may increase the rates and charges comprising the Fees by giving the Customer at least sixty days' written notice. If the Customer does not accept the increase it may terminate the Agreement by giving iNovar not less than thirty days' written notice. Following any such termination iNovar will promptly repay any Fees already paid for Services that would have been delivered after the termination date including a pro-rated rebate of any annual

Fees.

4.3 iNovar may reduce the rates and prices comprising the Fees at any time, even during the first Contract Period, with whatever notice it deems appropriate. iNovar will promptly repay the difference between the new and old Fees in respect of payments already made for Services to be delivered after the effective date for the reduction including a pro-rated rebate of any annual Fees.

4.4 Where the Contract Period is one month, iNovar will invoice the Fees monthly in advance or once the agreed usage or financial cap for the account is reached, whichever occurs first.

4.5 Where the Contract Period is twelve months or more, Fees calculated on an annual basis will be invoiced annually in advance and all other Fees will be invoiced monthly in advance.

4.6 All invoices are due for payment within thirty days of the invoice date. iNovar may charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on any late payment and reserves the right to terminate or suspend the Agreement for non-payment for this cause.

4.7 Fees are quoted exclusive of taxes where applicable which will be paid by the Customer at the prevailing rate.

## **5 Suspension**

5.1 Without prejudice to any of its other rights, iNovar may suspend the Services in whole or part, upon written notice to the Customer where:

- (a) iNovar in its sole and reasonable discretion, considers, or any third party claims that the Customer is in breach of section 3.4; or
- (b) the Customer exceeds the usage or financial cap for its account or in the event of any extended delay in settlement of any invoice; or
- (c) iNovar reasonably believes that the owner of any Intellectual Property in the Content has withheld, withdrawn or failed to give its permission for the Customer's use of the same; or
- (d) iNovar reasonably believes there to be a material breach, or persistent lesser breach by the Customer of the Agreement; or
- (e) iNovar is requested to do so by any statutory authority.

5.2 iNovar may suspend the Services until the circumstances causing the suspension have ceased.

5.3 The Customer will be obliged to pay the Fees for duration of the suspension. The Customer will be



liable for any additional costs incurred by iNovar relating to the matter causing the suspension.

5.4 The Customer will have no access to the Content during any period of suspension.

5.5 iNovar shall not be liable for any of its obligations under any service level agreement that are affected by suspension.

## **6 Term and termination**

6.1 The Agreement and the Contract Period begin on the date requested by the Customer on its purchase order provided that the Customer allows at least five days between the date when iNovar receives the purchase order and the start date of the Services. The Agreement continues for successive Contract Periods until terminated elsewhere under this section 6.

6.2 By giving the Customer the reasons for doing so, iNovar may reject any purchase order within five days of receipt if the purchase order is not consistent with these terms and conditions or on any other reasonable grounds.

6.3 The then current Contract Period shall recommence where the Customer changes the Services it had previously selected if this brings about a change in the applicable Fee band.

6.4 Where the Contract Period is twelve months or greater, the Customer may terminate the Agreement with effect from the end of any Contract Period by giving iNovar not less than thirty days' prior written notice.

6.5 In the event of the Customer seeking to terminate a fixed term contract prior to the completion of the Contract Period then the balance of Fees payable under such fixed term contract shall become immediately due to iNovar.

6.6 iNovar may terminate the Agreement with effect from the end of any Contract Period by giving the Customer not less than sixty days' prior written notice.

6.7 Either Party may terminate the Agreement by written notice to the other if the other:

(a) is in material breach or persistent lesser breach of any provision of the Agreement or of any provision required by law and fails to remedy such breach within thirty days of receiving written notice of the same; or

(b) presents a petition or has a petition presented by a creditor for its winding up, or calls a meeting to pass a resolution for voluntary winding up, or enters into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), or calls a meeting of its creditors, or has a

receiver appointed for any of its undertakings or assets, or is deemed by any relevant statutory provisions to be unable to pay its debts or, where the Customer, being a private individual, is subject of a bankruptcy petition.

6.8 All rights and obligations of the Parties under the Agreement shall automatically cease upon termination except for such rights of action that have accrued prior to such termination and any rights or obligations under the Agreement or at law, which expressly or by implication are intended to come into or continue in force upon termination.

6.9 The Customer is responsible for removing all Content from iNovar's infrastructure prior to the date of termination of the Agreement.

6.10 Upon termination of the Agreement, iNovar shall be entitled to re-assign all IP addresses and server names previously assigned to the Customer and the Customer shall promptly update all corresponding DNS entries for the Customer's domain name(s).

## **7 Intellectual Property and Intellectual Property indemnity**

7.1 iNovar warrants that it is the owner or licensee of all Intellectual Property necessary for the performance of the Services. All Intellectual Property relating to the Services and derivative works thereof arising under or during the Agreement shall be owned exclusively by iNovar or its licensors.

7.2 iNovar grants the Customer the right to use iNovar's Intellectual Property to the extent necessary for the Customer to make proper use of the Services but for no other purpose.

7.3 iNovar agrees to indemnify the Customer from all claims that its Intellectual Property infringes the rights of any third party provided that the Customer:

- (a) has used the Intellectual Property in accordance with the Agreement;
- (b) does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to iNovar's defence;
- (c) gives iNovar prompt notice of any claim and the right to defend and settle any such claims in its own discretion;
- (d) gives iNovar reasonable assistance to defend any such claims at iNovar's cost;
- (e) uses all reasonable endeavours to mitigate iNovar's liability.

7.4 If any such infringement occurs or may occur, iNovar may at its sole option and expense:

- (a) procure the right for the Customer to continue using the Services; or

(b) modify or amend the Services so as to remove or avoid the infringement without materially altering the designed capability.

7.5 The Customer warrants that it is the owner or licensee of all Intellectual Property in the Content. All Intellectual Property relating to the Content and derivative works thereof arising under or during the Agreement shall be owned exclusively by the Customer or its licensors.

7.6 The Customer grants iNovar the right to use the Customer's Intellectual Property to the extent necessary for iNovar to provide the Services but for no other purpose.

7.7 The Customer agrees to indemnify iNovar from all claims that the Content or any of the Customer's Intellectual Property infringes the rights of any third party provided that iNovar:

(a) has used the Content and Intellectual Property in accordance with the Agreement;

(b) does not knowingly make or intimate any admission, settlement, opinion or undertaking that may be detrimental to the Customer's defence;

(c) gives the Customer prompt notice of any claim and the right to defend and settle any such claims in its own discretion;

(d) gives the Customer reasonable assistance to defend any such claims at the Customer's cost;

(e) uses all reasonable endeavours to mitigate the Customer's liability.

7.8 If any such infringement occurs or may occur, the Customer may at its sole option and expense:

(a) procure the right for iNovar to continue using the Intellectual Property for the purpose of supplying the Services; or

(b) modify or amend the Content so as to remove or avoid the infringement; or

(c) promptly remove or discontinue use of the Content affected by the third party claim.

## **8 Data protection 8a. (UK Customers)**

8.1 The Customer agrees that it is the data controller under the Data Protection Act 1998 for the Content and for any Authorised User details and shall diligently observe its obligations under the Data Protection Act 1998.

8.2 To the extent that the Services require iNovar to process the Customer's personal data, iNovar confirms that it shall do so strictly in accordance with the Customer's instructions. The Parties agree that in such case iNovar acts as data processor and iNovar confirms that it shall diligently observe its obligations under the Data Protection Act 1998.



8.3 iNovar warrants that throughout the course of the Services, the Content will remain wholly within the European Economic Area at all times.

8b. (EU Customers)

8.4 The Customer agrees that it is the data controller under the relevant European Union Data Protection legislation for the Content and for any Authorised User details and shall diligently observe its obligations under such legislation.

8.5 To the extent that the Services require iNovar to process the Customer's personal data, iNovar confirms that it shall do so strictly in accordance with the Customer's instructions. The Parties agree that in such case iNovar acts as data processor and iNovar confirms that it shall diligently observe its obligations under the relevant European Union Data Protection legislation.

8.6 iNovar warrants that throughout the course of the Services, the Content will remain wholly within the European Economic Area at all times.

8c. (US Customers)

8.7 The Customer agrees that it is the data controller under the relevant US Data Protection legislation for the Content and for any Authorised User details and shall diligently observe its obligations under such legislation.

8.8 To the extent that the Services require iNovar to process the Customer's personal data, iNovar confirms that it shall do so strictly in accordance with the Customer's instructions. The Parties agree that in such case iNovar acts as data processor and iNovar confirms that it shall diligently observe its obligations under the relevant US Data Protection legislation.

8.9 iNovar warrants that throughout the course of the Services, the Content will remain wholly within the continental United States at all times.

## **9 Confidential information**

9.1 Confidential Information means information howsoever disclosed by one Party to the other which was not already in the public domain prior to the Agreement.

9.2 Each Party shall only use the other's Confidential Information to the extent necessary and in connection with the performance or use of the Services, as applicable, or as otherwise necessary to give effect to the Agreement, or as may be required by law.

9.3 Each Party agrees to keep the other's Confidential Information in confidence and only disclose such Confidential Information on a need-to-know basis and only to persons or parties under its control.

9.4 The Customer agrees that iNovar may include the Customer in its list of customers. Each Party will obtain the other's prior written approval for any other publicity concerning the Agreement or which mentions the other Party.

9.5 The obligations in this section 9 survive termination of the Agreement.

## **10 Liability**

10.1 Subject to sections 10.2 and 10.3, iNovar's aggregate liability to the Customer in any Contract Period in connection with the Agreement whether arising in contract, tort, delict, equity or otherwise at law shall not exceed the greater of five thousand US dollars or 110% of the total Fees paid by the Customer in the twelve months prior to the event giving rise to the liability where the Contract Period is twelve months, or 110% of the total Fees paid by the Customer in the month prior to the event giving rise to the liability where the Contract Period is one month.

10.2 iNovar shall not be liable to the Customer for any loss of profit, business, revenue, goodwill or anticipated savings or other economic, consequential or indirect loss or damage howsoever arising.

10.3 iNovar does not exclude or limit liability arising from any wilful misconduct or fraud on its part nor for any death or personal injury arising from its negligence.

## **11 TUPE (UK Customers)**

11.1 The Customer shall indemnify iNovar from all arising costs and liabilities and these terms and conditions and the Fees shall be reasonably adjusted if it is deemed that the Transfer of Undertakings (Protection of Employment) Regulations 2006 or similar apply to the Agreement.

## **12 Dispute resolution**

12.1 The chief executive (or equivalent) of the Parties or their nominees will have thirty days to resolve any dispute before either Party may resort to any other course of action.

## **13 Assignment**

13.1 Neither Party may assign or transfer all or part of the Agreement, or any of its rights or obligations or appoint any agent to perform such obligations without the other's prior written consent.

However, by giving the other not less than sixty days' written notice, either Party may transfer all of its



rights and obligations to a wholly owned subsidiary, or to a wholly owned subsidiary of its parent company, or to its parent company.

## **14 Waiver**

14.1 Failure by either Party to enforce any of the provisions of the Agreement will not be a waiver of such rights and will not affect the validity of the Agreement or that Party's rights to take subsequent action.

## **15 Changes**

15.1 In order to continuously improve its operations and by giving the Customer sixty days prior notice, iNovar may from time to time alter the Services, the service level agreements, the Terms of Service or these terms and conditions but not the Fees.

15.2 If the Customer cannot accept any alteration it may terminate the Agreement by giving iNovar not less than thirty days' written notice at any time during the sixty day period in section 15.1. The notice given by the Customer can be effective at any time during the then current Contract Period. iNovar will promptly repay any payments already made for Services that would have been performed after the termination date including a pro-rated rebate of any annual Fees.

15.3 The Customer may change the selected Services in accordance with the process in the Schedules.

15.4 The Agreement may also be changed by the written agreement of the Parties; such written agreement shall state that it is intended to revise the Agreement.

## **16 Severability**

16.1 If any competent authority finds any part of the Agreement to be invalid, unlawful or unenforceable, the Agreement will be deemed to be amended to the extent necessary to remove the competent authority's findings but so as to allow the rest of the Agreement to remain valid and unaffected to the fullest possible extent.

## **17 Force majeure**

17.1 iNovar will not be liable for delay or failure to perform obligations caused by any attack on its security or for any circumstances beyond its reasonable control, provided that it promptly gives the

Customer written notice of such circumstances and uses reasonable endeavours to mitigate the delay or failure.

## **18 Notices**

18.1 Any notice or written agreement may be given as follows:

(a) by delivery recorded mail or courier to the other Party's authorised representative at any address shown in the Agreement, or to any other address as one Party has notified the other of, and will be valid on the date of recorded receipt, or

(b) by fax to the other Party's authorised representative to any fax number shown in the Agreement, or to any other fax number as one Party has notified the other of, and will be valid at the time shown on a successful transmission report, or

(c) by email to the email address of the other Party's authorised representative and will be valid at the time of sending unless the email system has generated an unsuccessful transmission or unsuccessful delivery report. Emails sent to iNovar's authorised representative must be copied to support@inovarcorp.com.

## **19 Legal construction**

19.1 No agency, joint venture or partnership is created by the Agreement.

19.2 No term of the Agreement is enforceable by any person who is not a party to it whether relating to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

19.3 The Parties agree to use the English language for all matters relating to the Agreement.

19.4 The Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. The United Nations' Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

19.5 The Agreement represents the entire agreement and understanding between the Parties in respect of its subject matter. Any terms and conditions of any purchase orders, acknowledgements or receipts issued by the Customer in connection with the Services will have no effect even if they contain statements to the contrary and it is agreed that iNovar will accept any such purchase orders, acknowledgements or receipts subject to the terms and conditions of the Agreement only.

19.6 By submitting its purchase order for the Services, the Customer is deemed to have accepted these terms and conditions.