

INNOVATION TAP LLC

TERMS OF SERVICE / TRIAL AGREEMENT

THE TERMS OF SERVICE / TRIAL AGREEMENT (“**AGREEMENT**”) IS BETWEEN YOU (“**TRIAL USER**”) AND INNOVATION TAP LLC (“**INNOTAP**”). BY CLICKING THE “LAUNCH” OR “SETUP” BUTTONS DISPLAYED BELOW, TRIAL USER IS ENTERING INTO A LEGALLY BINDING AGREEMENT AND TRIAL USER AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT GOVERNING THE TRIAL USE OF THE REAL-TIME DECISION SUPPORT SERVICES OFFERED BY INNOTAP THROUGH ITS WEBSITES (COLLECTIVELY, “**SERVICES**”). IF TRIAL USER DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, TRIAL USER SHOULD NOT CLICK THE “LAUNCH” OR “SETUP” BUTTONS AND TRIAL USER SHALL NOT USE THE SERVICES.

1. **Use of Services.** INNOTAP hereby grants to Trial User limited access to the Services solely for the purpose of Trial User’s evaluating of the Services in accordance with the terms and conditions of this Agreement. Trial User may request to purchase Services by contacting INNOTAP using the contact information at <http://www.innotap.com/contact.php>.

2. **Intellectual Property and Confidential Information.**

(a) **Ownership.** Trial User acknowledges and agrees that the Services, any and all related technology (including, without limitation, any INNOTAP software that may be used with the Services (“**INNOTAP Software**”)), data, content, processes, prototypes and concepts, plans, ideas, inventions, discoveries, original works of authorship, findings, conclusions, concepts, improvements, know-how, documentation, User Feedback (as defined below), and any and all intellectual property rights inherent therein or appurtenant thereto (“collectively, **INNOTAP Intellectual Property**”) are and shall remain the exclusive property of INNOTAP, its licensors, and its and their respective successors and assigns. This Agreement does not grant to Trial User any right, title or interest in or to the INNOTAP Intellectual Property. To the extent Trial User has communicated prior to the Effective Date (as defined in Section 6(a)), or will communicate, verbally or in writing any ideas or feedback to INNOTAP concerning the Services (“**User Feedback**”), Trial User hereby assigns, transfers and conveys to INNOTAP, or its designee, all worldwide right, title, and interest in and to any and all User Feedback, including, without limitation, any ideas, inventions, discoveries, original works of authorship, findings, conclusions, concepts, and improvements in such User Feedback.

(b) **Transfer and Other Restrictions.** Trial User shall not copy, relocate, move, sublicense, rent, timeshare, loan or lease the Services, INNOTAP Software, or any other INNOTAP Intellectual Property, or otherwise distribute to, or operate the Services for the benefit of, any third party. Trial User shall not: (i) alter or remove any confidential or proprietary notice or legend from any Services, INNOTAP Software, or any other INNOTAP Intellectual Property; or (ii) attempt to decompile, disassemble or reverse engineer the Services, INNOTAP Software, or any other INNOTAP Intellectual Property. Trial User shall be responsible for safeguarding the user name and password for the Services against unauthorized access by any other person or entity.

(c) **Acknowledgment.** Trial User hereby acknowledges and agrees that the Services and all other INNOTAP Intellectual Property contain confidential and proprietary information belonging exclusively to INNOTAP and its licensors (“**Confidential and Proprietary Information**”). Confidential and Proprietary Information does not include: (i) information already known or independently developed by Trial User outside the scope of this relationship by personnel not having access to any Confidential and Proprietary Information; (ii) information already in the public domain through no wrongful act of Trial User; or (iii) information received by Trial User from a third party who was free to disclose such information.

(d) **Covenants.** With respect to Confidential and Proprietary Information, and except as expressly authorized herein, Trial User shall not use Confidential and Proprietary Information for any purpose other than as expressly permitted in this Agreement or disclose Confidential and Proprietary Information to any person or entity. Trial User shall use at least the same degree of care in safeguarding the Confidential and Proprietary Information as Trial User uses in safeguarding its own confidential information, but in no event less than reasonable due diligence and care. Upon termination of this Agreement, Trial User shall return or destroy, all Confidential and Proprietary Information in its possession or control. Upon INNOTAP’s prior written request, Trial User shall certify to INNOTAP in writing that Trial User has complied with the obligations of the foregoing sentence.

(e) **Injunctive Relief.** In the event of actual or threatened breach of this Article 2 (“Intellectual Property and Confidential Information”) or infringement of INNOTAP’s intellectual property rights by Trial User, and in addition to any other remedies available at law or in equity, INNOTAP may seek immediate injunctive and other equitable relief, without necessity of posting bond, or having to show actual damage or irreparable harm.

3. **Warranty Disclaimer.** THE SERVICES, DATA, AND CONTENT ARE PROVIDED TO TRIAL USER “AS IS”, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES. INNOTAP EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE. Without limiting the generality of the foregoing or the limitation of liability set forth in Section 4, Trial User acknowledges and agrees that (i) Trial User is using the Services at its own discretion and risk; (ii) Trial User is responsible for any and all decisions and conclusions made based on the data and content provided by or through the Services, including, without limitation, any data or content relied upon for settlement purposes; and (iii) neither INNOTAP nor any of its suppliers or licensors shall be responsible for any inaccuracies in the data or content provided by or through the Services, or any decisions or conclusions of Trial User based on such data or content provided by or through the Services. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

4. **Limitation of Liability.** IN NO EVENT SHALL INNOTAP’S OR ANY OF ITS SUPPLIERS OR LICENSORS LIABILITY, FOR DAMAGES ARISING OUT OF THE USE OF THE SERVICES OR ARISING UNDER THIS AGREEMENT, WHETHER IN TORT, CONTRACT OR OTHERWISE, TO TRIAL USER OR ANY OTHER PERSON OR ENTITY, EXCEED ONE DOLLAR (\$1.00) IN THE AGGREGATE. IN NO EVENT SHALL INNOTAP OR ANY OF ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR SIMILAR DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF WORK PRODUCT, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, WHETHER DIRECTLY OR INDIRECTLY CAUSED, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 4 SHALL REMAIN FULLY EFFECTIVE EVEN IF THE REMEDIES AVAILABLE TO A PARTY FAIL OF THEIR ESSENTIAL PURPOSE OR ARE OTHERWISE HELD TO BE UNENFORCEABLE. Trial User shall have one (1) year from the accrual of a cause of action to bring such action. If Trial User fails to bring such action within one (1) year of its accrual, then Trial User shall be deemed to have waived whatever rights Trial User may have had in relation to such cause of action including all legal and equitable remedies. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

5. **Indemnification.** Trial User shall defend, indemnify, and hold harmless INNOTAP, and its officers, directors, agents, contractors, suppliers, and employees against all costs, expenses, losses, and damages (including reasonable attorneys’ fees and costs) incurred through claims of third parties against INNOTAP based on or arising from (i) Trial User’s trading operations or use of the Services, or (ii) Trial User’s violation of any applicable laws or regulations.

6. **Term and Termination.**

(a) **Term.** This Agreement shall commence on the date Trial User accepts the terms and conditions of this Agreement (“*Effective Date*”) and ends on the earlier of the date (i) Trial User notifies INNOTAP that it wishes to terminate this Agreement in accordance with the notice provision in Section 10(c), (ii) the Services expire or INNOTAP terminates the Services, or (iii) Trial User enters into a written Master Subscription Agreement with INNOTAP (“*Term*”).

(b) **Survival.** The provisions contained in Sections 2, 3, 4, 5, this 6(b), 7, 9, and 10 shall survive the termination of this Agreement for any reason in accordance with their respective terms, except that Section 9 shall survive for only two (2) years.

7. **Disputes.** The parties shall use reasonable efforts to resolve amicably any disputes that may relate to or arise under this Agreement. Any disputes that cannot be resolved in such manner shall be settled exclusively by arbitration conducted under the auspices of the American Arbitration Association (the “AAA”) in Philadelphia,

Pennsylvania, in accordance with the Commercial Arbitration Rules of the AAA; provided that either party may seek injunctive relief from any court of competent jurisdiction. The award rendered in such arbitration shall be final, non-appealable and bind the parties, and any court having jurisdiction with respect thereto can enter judgment upon the award. Without limiting the generality of the foregoing, the following specific provisions shall also apply: (i) the proceedings shall be held before a single arbitrator; (ii) the arbitrators shall apply the law chosen in Section 10(h); (iii) the prevailing party shall be entitled to recover, in addition to any other amounts awarded, an amount for legal and other related costs and expenses, including attorneys' fees, incurred thereby that is reasonable and equitable in relation to the award; (iv) the costs of the arbitration (other than the parties' costs and expenses) will be allocated among the parties in the discretion of the arbitrator; and (v) the decision of the arbitrator shall be in a writing stating the facts and law upon which the decision rests and shall be given no later than ten (10) days following the conclusion of the necessary hearings. Notwithstanding the foregoing, INNOTAP shall be permitted to bring any intellectual property claim or any claim involving the breach of any confidentiality obligations under this Agreement in any court of competent jurisdiction.

8. **Compliance with Laws; Export Regulations.** The United States Government regulates transfer of technology across national boundaries. Trial User shall not acquire, ship, transport, export or re-export the Services, directly or indirectly, into any country in violation of any applicable law (including, but not limited to, the United States Export Administration Act and the regulations promulgated thereunder) nor will Trial User use the Services for any purpose prohibited by such laws or any other laws.

9. **Development/Distribution of Competing Products.** Trial User shall not develop for sale, license, or other distribution to any third party any services or software programs that: (i) are functionally equivalent to the Services or the INNOTAP Software; or (ii) consist of a conversion or export of the Services or the INNOTAP Software to any database model, database manager, database/programming language, operating system, environment, hardware/software platform or client/server model of any kind now existing or hereinafter developed.

10. **Miscellaneous.**

(a) **Force Majeure.** Neither party hereto shall have any liability for delay or non-fulfillment of any terms of this Agreement caused by any cause not within such party's reasonable control (but excluding financial inability) such as an act of God, war, riots or civil disturbance, strikes, accident, fire, transportation conditions, labor and/or material shortages, governmental controls, regulations and permits and/or embargoes.

(b) **Notice.** All notices, certifications and other required communications hereunder (each, a "Notice") shall be in writing and shall be given to the receiving party: (1) personally; (2) by sending a copy of such Notice by certified mail, postage prepaid, return receipt requested; (3) by recognized overnight courier service, charges prepaid; (4) by facsimile or (5) by email, read receipt requested, to such party's address, email address or facsimile number set forth below or such other address, facsimile number or email address as the receiving party may modify from time to time by giving notice as provided in this Section 10(b). A Notice shall become effective upon receipt. Notices shall be sent to Trial User at the address, facsimile or email stated at the time the Trial User registers with INNOTAP. Notices shall be sent to INNOTAP at PO Box 111, Dresher, PA 19025, fax number 215-565-2750 or email ron.swartz@innotap.com, Attention: Ron Swartz.

(c) **Severability.** If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, then the validity and enforceability of all of the remaining provisions hereof shall not be affected thereby. Furthermore, if any particular provision of this Agreement shall be adjudicated to be invalid or unenforceable, then such provision shall be deemed amended by limiting and reducing it so as to be as close to the parties' intent while remaining valid and enforceable to the maximum extent compatible with the applicable laws of such jurisdiction, such amendment only to apply with respect to the operation of such provision in the applicable jurisdiction in which the adjudication is made.

(d) **Waiver & Remedies.** No waiver by either of the parties hereto of any failure by the other party to keep or perform any covenant or condition of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other covenant or condition. Except for those remedies denominated as sole and exclusive remedies in this Agreement, the remedies herein provided shall be deemed cumulative, and the exercise of one shall not preclude the exercise of any other remedy nor shall the specifications of remedies herein exclude any rights or remedies at law or in equity which may be available.

(e) Transferability. Trial User shall not assign this Agreement or assign, transfer or encumber the rights granted under this Agreement or delegate the obligations imposed on it by this Agreement, in whole or in part, without obtaining the prior written consent of INNOTAP. Any purported assignment by Trial User in violation of this Section shall be void. INNOTAP may assign this Agreement to a third party that is (i) a parent or subsidiary of INNOTAP, (ii) an acquirer of all or substantially all of the assets of INNOTAP, or (iii) in connection with a reorganization or merger. Subject to the foregoing, this Agreement and each and all of the provisions hereof bind and benefit the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(f) Independent Contractors. In making and performing this Agreement, the parties act and shall act at all times as independent contractors, and nothing contained herein shall be construed or implied to create an agency, association, partnership or joint venture between the parties. At no time shall either party make commitments or incur any charges or expenses for or in the name of the other party.

(g) Governing Law. This Agreement shall be construed and interpreted and its performance shall be governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of law principles of any jurisdiction.

(h) Entire Agreement. This Agreement contains the entire agreement between the parties hereto, and supersedes all other oral or written representations, statements, promises, agreements and letters or other expressions of intent of any kind with respect to the subject matter hereof between them. This Agreement may not be modified or amended except in writing signed by both parties.