

# **IMS - Professional Services Agreement**

*Innovative Manufacturing Solutions (IMS)*  
27825 Ave. Hopkins, Unit #5  
Valencia, CA 91355-4518  
(661) 775-1671 (Ph) – (661) 775-1672

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1. **IMS Services** - *IMS* engages in providing “Project Management Services, “System Design Services” and/or “Commissioning Services” as mutually agreed upon between *IMS* and *Client* once *IMS* receives a signed *IMS* “Professional Services Agreement” along with a retainer check (if any) as outlined in a “Project Proposal” along with a Company “Purchase Order.”
2. **Payment** – *Client* agrees to pay all amounts due, including any late payment fees, as specified in this Agreement, Service Order(s), Proposal(s) and/or Invoice. If any authority imposes a duty, tax or similar amount (other than *IMS* revenue), *Client* agrees to pay, and/or to promptly reimburse *IMS* for all such amounts. *Client* shall also pay or reimburse *IMS* for out-of-pocket expenses acquired by *IMS* in the course of performing this Agreement, in accordance with the Service Order(s), Proposal(s) and *IMS*’ current policy then in effect. Overdue amounts are subject to a late charge, at the lower rate of (a) one and one-half percent (1.5%) per month, or (b) the maximum legal rate. If *Client*’s account is more than 30 days overdue, *IMS* may suspend or terminate service until *Client*’s account is “Paid in Full.” *Client* shall promptly pay or reimburse *IMS* for all costs and expenses, including all reasonable attorneys’ fees, related to any breach of its obligations by *Client* under this Agreement. Any additional services beyond those specified in the Service Order(s) or Proposal(s) are subject to additional charges.
3. **Retainer** – *IMS* may require a retainer for services provided following any particular Service Order(s) and/or Proposal(s). Such a retainer, if specified in the Service Order(s) and/or Proposal(s), will be held by *IMS* until the Service Order(s) and/or Proposal(s) is fulfilled and then applied to the last invoice after all work is completed. *Client* will receive a full refund of any over-paid amounts.
4. **Minimum “On Site” Fees** – When *IMS* personnel is required to perform “On-Site” services, a minimum four (4) hour “On-Site” fee will apply. This minimum pertains to all services performed “On-Site.”
5. **Not a Fixed Fee Contract** – Unless otherwise stated in the Service Order(s) and/or Proposal(s), *IMS*’ then current hourly billing rate(s) will apply. *IMS* reserves the right to change its hourly billing rate(s) at any time.
6. **After Hours / Holiday Rates** – Work after 6PM on a normal workday (Monday through Friday, excluding *Holidays*) will be billed at one and one-half times the rates as detailed in the Service Order(s) and/or Proposal(s); should a Service Order(s) and/or Proposal(s) not be in effect, *Client* will be billed one and one-half times the current *IMS* hourly billing rate. Work performed on *Weekends* and *Holidays* will be billed as detailed in the Service Order(s) and/or Proposal(s); should a Service Order(s) and/or Proposal(s) not be in effect, *Client* will be billed two times the current *IMS* hourly billing rate.
7. **Travel Policy** – “Travel Time” charges will apply for all services performed “On-Site.” Travel time computation is from *IMS* offices to the *Client*’s site, charging half (1/2) the hourly rate when “On-Site” services are four (4) hours or more. The full hourly rate applies when “On-Site” service hours are less than four (4) hours, should a Service Order(s) and/or Proposal(s) be in effect, *Client* shall pay as specified in such Service Order(s) and/or Proposal(s).
8. **Out-of-Pocket Expenses** – Billing out-of-pocket expenses are at actual cost in addition to normal service hours. The types of expenses include, but are not limited to the following: Transportation, Airfare, Lodging, Car Rental and Meals for projects requiring travel. Modem/Phone charges, Delivery Expenses (e.g., mail, messenger, overnight services, etc.).
9. **Payment Terms** – The *Client* is “Billed” and/or “Invoiced” for services rendered upon project completion and/or as detailed in a Service Order(s) and/or Proposal(s). Payment is “**Due Upon Receipt of Invoice.**”
10. **Claims Against IMS** –All claims against *IMS* for any dispute regarding the amount and/or terms of any “Invoice,” must be received in writing within 15 days from receipt of “Invoice” for said product or services.
11. **Responsibility** – Software and/or hardware implementation may involve the efforts of various third parties, (e.g., software/hardware vendors, providers, outside consultants, *Client* personnel, etc.). *Client* accepts full responsibility for all products implemented in conjunction with any *IMS* “Service.” *Client* accepts full responsibility for all costs and services of third party developers, vendors, contractors, or sub-contractors. *Client* acknowledges and agrees that *IMS* is not responsible

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for the software, hardware, products and services of other parties. **IMS**; however, will work with *Client* on an hourly rate basis to attempt to resolve any problems caused by incompatibilities and/or failures of other parties' products or services. This includes, but is not limited to, any of **IMS**' time required to research, test, evaluate or restore corrupted or invalid data, or consult with outside technical support resources pertaining to problems caused by programming limitations and/or errors in software. In addition, **IMS**, at its then current hourly rates, will bill for any time spent helping *Client* troubleshoot, repair computer hardware and/or accessories regardless of whether the hardware is in operation at the time of this Agreement or purchased after the date of this Agreement.

12. **Warranty** – **IMS** warrants that all services performed under this Agreement and mutually accepted Service Order(s) and/or Proposal(s), shall be performed consistent with generally prevailing professional or industry standards. *Client* must report any deficiencies in **IMS**' services to **IMS** in writing within 15 days of completion to receive warranty remedies or said claim shall be waived. *Client*'s exclusive remedy for any breach of the above warranty shall be the re-performance of **IMS**' services.
13. **Warranty-Disclaimer** – This "Warranty" is exclusive and in lieu of all other warranties, whether express or implied, including any implied warranties of merchantability or fitness for a particular purpose and any oral or written representations, Service Order(s) and/or Proposal(s) or statements made prior to this Agreement. **IMS** does not represent or warrant that the operation of any software will be uninterrupted, error-free or completely secure. *Client* acknowledges that it is a sophisticated party to this Agreement and recognizes and agrees that this provision is an integral part of **IMS**' pricing and an important factor in its willingness to perform service hereunder. There are no warranties beyond the face of this Agreement.
14. **Liability** – In no event shall **IMS** be liable to *Client* for lost profits of *Client* or special, incidental, or consequential damages (even if **IMS** is aware of the possibility of such damages). **IMS**' total liability under this Agreement for damages, costs, and expenses, regardless of cause, shall not exceed the total amount of fees paid to **IMS** under the Service Order(s) and/or Proposal(s) by *Client* under this Agreement. *Client* shall indemnify **IMS** against all claims, liabilities, and costs, including reasonable attorney fees, of defending any third-party claim or suit, other than for infringement of intellectual property rights, arising out of or in connection with *Client*'s performance under this Agreement. **IMS** shall promptly notify *Client* in writing of such claim or suit, and *Client* shall have the right to control the defense and any settlement of the claim or suit. *Client* acknowledges that the fees paid by it reflect the allocation of risk set-forth in this Agreement that **IMS** would not enter into this Agreement without these limitations on liability.
15. **Termination** – Either party may terminate this Agreement at any time by giving 30 days' written notice to the other party of the intent to terminate. In addition, **IMS** may terminate this Agreement immediately upon written notice in the event *Client* fails to perform its obligation for payment of invoices pursuant to this Agreement. In such event, **IMS** shall have the right to terminate this Agreement and all Service Order(s) and/or Proposal(s) and to recover for all services performed and/or products delivered prior to the date of termination. *Client* shall be liable for all costs of collection including reasonable attorney's fees incurred by **IMS** to enforce its rights under this Agreement.
16. **Arbitration** – In addition to actions taken for late payments and/or fees, and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, and/or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach, shall be settled by arbitration by a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, pursuant to an arbitration held in Los Angeles County, California. The judgment upon the award rendered by the arbitrator shall be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder. With respect to any dispute arising under or related to this Agreement arbitration must commence within one (1) year of the last day that **IMS** actually performed services for the other party to dispute. The failure of any party to this Agreement to commence the arbitration within this one (1) year period shall bar the commencement of arbitration or other legal action regarding the dispute, and all claims pertaining to the dispute shall be waived unconditionally and irrevocably.
17. **Governing Law** – This Agreement and each Service Order(s) and/or Proposal is governed by and construed in accordance with the laws of the State of California. Subject to the section above regarding arbitration, each of the parties irrevocably and

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unconditionally agrees that the courts located in Los Angeles County California have exclusive jurisdiction and shall be the exclusive venue to hear and determine each suit, action or proceeding, and to settle disputes, which may arise out of or in connection with this Agreement.

18. **Notices** – All notices and other communications in connection with this Agreement, shall be in writing and shall be considered given as follows: a) when delivered personally to the recipient’s address as stated on this Agreement, b) three days after being deposited in the United States mail, with postage prepaid to the recipient’s address as stated on this Agreement and/or c) when sent by fax or electronic mail, such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail or the recipient delivers a written confirmation of receipt.
19. **Entire Agreement & Modifications** – Both parties acknowledge that they have read this Agreement and the Service Order(s) and/or Proposal(s) (if any), and further agrees that this Agreement, and the Service Order(s) and/or Proposal(s) in place are the complete and exclusive statement of the parties Agreement. In addition, supersedes and merges all prior proposals, understandings, and agreements oral or written, between the parties relating to the subject matter hereof, including without limitation the terms of any *Client* “Purchase Order.” No modification, amendment, supplements to or waiver of this Agreement, Service Order(s) and/or Proposal(s) shall be binding upon the parties hereto unless in writing and duly signed by both parties.
20. **Force Majeure** – *IMS* shall not be liable for any delay in or impairment of performance resulting in whole or in part from Acts of God, labor disruptions, shortages, inability to procure product, supplies or raw materials, severe weather conditions, and/or any other circumstances or cause beyond the control of *IMS* in the conduct of its business.

This **IMS Professional Services Agreement** (“Agreement”) dated this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_ (the “Effective Date”), is between **Innovative Manufacturing Solutions**, a California Corporation, having its principal offices located at: **27825 Ave. Hopkins, Unit #5, Valencia, California 91355-4581 (IMS)** and \_\_\_\_\_, a \_\_\_\_\_ Corporation, with its principal offices located at: \_\_\_\_\_ (“Client”). *IMS* and *Client* hereby agree to the terms and conditions stated herein.

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered by the authorized officers of both parties hereto, to be effective as of the “Effective Date.”

<b>Accepted by: IMS</b>	<b>Accepted by:</b>
<b>Signed:</b>	<b>Signed:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Fax:</b>	<b>Fax:</b>