[Request for Proposals (RFP)](https://www.mcc.gov/resources/doc/sbd-template-for-procurement-of-consulting-services)

|  |  |
| --- | --- |
| RFP Number: | #Inotek4Cahul-2025-001-Audit |
| Issuance date | April 08, 2025 |
| Deadline for offers | April 22, 2025, 15:00 Chisinau time |
| Description | Provision of Audit Services for the Inotek4Cahul project, as per Sida requirements |
| For | Inotek4Cahul project |
| Funded By | Sida, Swedish International Development Agency |
| Issued by | Inotek Foundation |
| Contact: | [dcasuneanu@inotek.md](mailto:dcasuneanu@inotek.md)  – Daniela Casuneanu, Financial Director  [rnegru@inotek.md](mailto:rnegru@inotek.md) – Rodica Negru, Deputy Director |

**Section 1: Introduction and Instructions to Offerors**

* 1. **Acronyms and Definitions**

|  |  |
| --- | --- |
|  |  |
| Donor | Organization that finances the implemented project/program |
| Sida | Swedish International Development Cooperation Agency |
| EU | European Union |
| ICT | Information and Communication Technology |
| IT | Information Technology |
| STEM | Science Technology, Engineering and Math |
| ToR | Terms of Reference |
| VAT | Value Added Tax |

* 1. **Introduction**:

**Inotek Foundation** is looking for eligible and responsible firms to perform the audit of Inotek4Cahul project as described in this RFP and the details specified in the Terms of Reference (ToR) for Audit of Project/Programme Support including ISA and IFAC.

The objective of the assignment is to audit the financial report on the Inotek4Cahul project for the period from July 01, 2024 to June 30, 2025 submitted to the donor and to express an audit opinion accordance with SNT / [ISRS 4400 *Engagements to perform Agreed-upon*](https://www.ifac.org/_flysystem/azure-private/publications/files/B010%202013%20IAASB%20Handbook%20ISRS%204400.pdf)[*Procedures regarding Financial Information*](https://www.ifac.org/_flysystem/azure-private/publications/files/B010%202013%20IAASB%20Handbook%20ISRS%204400.pdf)and Procedures as per Conditions for grands, on whether the financial report of Inotek4Cahul project is in accordance with the Cooperation partner´s accounting records for financial reporting.

## Offer Deadline and Submission Protocol:

Offers must be submitted not later than **April 22, 2025, 15:00, Chisinau time**.

Offers received after the specified time and date will be considered late and will NOT be evaluated by Inotek Foundation.

## Electronic Submission Only:

The only acceptable submission method is electronical – via email. Any email offers must be sent to the following address:

to: [dcasuneanu@inotek.md](mailto:dcasuneanu@inotek.md)  – Daniela Casuneanu, Financial Director

cc: [rnegru@inotek.md](mailto:rnegru@inotek.md) – Rodica Negru, Deputy Director and [info@inotek.md](mailto:info@inotek.md)

Offers must be submitted in two (2) separate .pdf format files corresponding to the:

1. **Technical Proposal** (Forms A-E and other mandatory documents required by this solicitation documents). There may be one or several PDF files with relevant names.
2. **Financial Proposal**

All offers must be prepared in one of the 2 languages: English or Romanian.

## Technical and Cost Volume

* + 1. **Technical Volume**

The Technical Volume should describe in detail the offeror’s proposed plan for providing the services and commodities described in the specifications found in ToR. It should demonstrate a clear understanding of the work to be undertaken and the responsibilities of all parties involved. The plan should include details on equipment, personnel, and subcontractors that the offeror will make available to carry out the required activities. The plan should also provide details on the anticipated delivery schedule, including an estimated completion date.

**At a minimum, the Technical Volume must contain the following required completed documents:**

1. **The forms A-E (**attached word file to this RFP**), filled in and signed:**
   * Application form (FORM A)
   * Letter of Transmittal (see FORM B)
   * Certificate of Independent Price Determination (see FORM C)
   * Certification Regarding Responsibility Matters (see FORM D)
   * Evidence of Responsibility Statement (see FORM E)

## Past performance information:

* + *List of audit assignments completed within the last 3 years. Highlight the audit assignments provided as per International Standards on Auditing (ISA 805), and experience with the audit of NGOs, international Organizations, donor funded projects, etc.*

## Staffing capacity to perform the proposed services. List of audit team planned to be assigned (Senior audit, auditor), with attachment:

* + *CVs of the team. CVs should include details of audits carried out by applicable staff, describing in particular the audit experience of NGOs, international organizations, donor- funded projects, including ongoing missions indicating the capacity and ability to conduct the audit ;*
  + *Team qualification certificates;*

## Description of proposed services/technical approach with a clear timeline.

Upon conclusion of the assessment of the proposals, the successful bidder is required to promptly submit the following **supplementary documents** within a timeframe of 3 days:

* Copy of official registration and business license if applicable (also for subcontractors – if any)
* Bank Account Award Certificate - copy – (issued by the bank);
* Tax Clearance Certificate;
* Company profile description
* 3 reference letters from the last 5 years;

## Subcontracting arrangements:

If the execution of work to be performed by the offeror requires the hiring of subcontractors, the proposal must clearly identify the subcontractor(s), contact information of subcontractor(s), and the work they will perform. Inotek Foundation will not refuse a proposal based upon the use of subcontractors; however, Inotek Foundation retains the right to approve or reject the specific subcontractors selected.

All electronic copies of documents in the Technical Volume must be in PDF, Microsoft Word or Microsoft Excel format.

The information contained in the Technical Volume should not contain any cost- or price-related information.

## Cost Volume

Taking into consideration the complexity of the work, the cost proposal is used to determine which proposals represent the best value and serves as a basis of negotiation before award of a subcontract.

It should offer a clear understanding upon the amount of work, different types of activities (if applicable), but offer a fixed price for the assignment taking into account all details.

If relevant, the cost proposal shall also include a budget narrative that explains the basis for the estimate of every cost element or line item. Supporting information must be provided in sufficient detail to allow for a complete analysis of each cost element or line item. Inotek Foundation reserves the right to request additional cost information if the evaluation committee has concerns of the reasonableness, realism, or completeness of an offeror’s proposed cost.

The agreement under which this procurement is financed does not permit the financing of any taxes, VAT, tariffs, duties, or other levies imposed by any laws in effect in the Cooperating Country. No such Cooperating Country taxes, charges, tariffs, duties or levies will be paid under an order resulting from this RFP.

**Currency of Proposal**: Financial offers must be presented in **MDL** only. No other currencies accepted.

**Format of Financial Proposal**: In formulating its financial proposal, the offeror should be guided by the ***FORM F – Financial Offer (attached to the RFP)*.**

**Partial Quotes:** not allowed.

## Validity Period

Offers must remain valid for at least 90 calendar days after the RFP deadline.

## Eligibility of Offerors

By submitting an offer in response to this RFP, the offeror certifies that it and its principal officers are not debarred, suspended, or otherwise considered ineligible for an award. Inotek Foundation will not award a contract to any firm that is debarred, suspended, or considered to be ineligible.

As per EU procurement rules, a contractor is eligible if:

* it is not included in the EU Sanctions List or is subject to EU Restrictive Measures provided at [www.sanctionsmap.eu](http://www.sanctionsmap.eu/) and all its employees, consultants, suppliers and contractors involved in fulfilment of this Agreement or implementation of any part of the Project are not included in the EU Sanctions List or are subject to EU Restrictive Measures and none part of the Fee is made available to, or for the benefit of, persons, groups and entities designated under the EU Sanctions List or subject to EU Restrictive Measures. The Provider shall cooperate with the Beneficiary in this respect and promptly inform the Beneficiary if it reveals that any recipient of such funds falls under the EU Sanctions List / EU Restrictive Measures.
* it does not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion;
* it refrains from corruption and other irregularities and requires all its employees, consultants, suppliers and contractors involved in fulfilment of this assignment to refrain from any such corruption and other irregularities. Corruption and other irregularities refer to all kinds of: (1) corruption, including bribery, nepotism, illegal gratuities or other form of abuse of trust, power and position for improper gain; (2) misappropriation of cash, inventory and all other kinds of assets; (3) financial and non-financial fraudulent statements; (4) all other use of Project/Core Activities funds which is not in accordance with the work plan and Budget approved under Sida-Inotek Foundation Agreement. The Provider shall cooperate with the Beneficiary in this respect and promptly inform the Beneficiary of any indication of corruption and other irregularities and investigate the presence of corruption and other irregularities and act, including legal actions, against persons suspected of corruption and other irregularities;
* it takes all necessary precautions to avoid any conflicts of interest in all matters related to fulfilment of this Agreement or implementation of any part of the Project and ensures its employees, consultants, suppliers and contractors are not placed in a situation which could give rise to conflict of interest. A conflict of interest shall be deemed to arise where the impartial and objective exercise of the functions of any person fulfilling the Agreement and/or implementing of any part of the Project is compromised.

## Only one Offer allowed

* The Offeror (including the Lead Entity on behalf of the individual parties of any Joint Venture/ Consortium/ Association) shall submit only one Offer, either in its own name or, if a joint venture/Consortium/Association, as the lead entity of such Joint Venture/Consortium/Association. Offers submitted by two (2) or more Offerors shall all be rejected if they are found to have any of the following:
* a) they have at least one controlling partner, director, or shareholder in common; or
* b) they have the same legal representative for purposes of this RFP;
* c) any one of them receive or have received any direct or indirect subsidy from the other/s; or
* d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Offer of, another Offeror regarding this RFP process;
* e) they are subcontractors to each other's Offer, or a subcontractor to one Offer also submits another Bid under its name as lead Bidder; or
* f) some key specialists proposed to be in the team of one Offeror participates in more than one Offeror received for this RFP process. This condition relating to the specialists does not apply to subcontractors being included in more than one Offer.

## Evaluation and Basis for Award

The award will be made to the offeror whose proposal is determined to be responsive to this solicitation document, meets the eligibility criteria stated in this RFP, meets the technical, management/personnel, and corporate capability requirements, and is determined to represent the best value to Inotek Foundation.

Offeror’s minimum professional qualification criteria:

* Audit firm has min 5 years of previous experience in providing audit services, including as per ISA
* Audit firm complies with the statements of membership obligations of IFAC.
* Audit firm has min 3 years of previous experience in providing audit services of donor funded projects/NGOs
* at least 2 (two) certified auditor:
  + *1 Certified Senior auditor/Team leader with min. 5 years of experience in audit, and mandatory experience in auditing of donor funded projects/NGOs (auditing EU funded projects would be considered an advantage);*
  + *1 Certified auditor with minimum 3 years of experience in audit;*
  + *Audit team linguistic skills: advanced knowledge of English and Romanian (both written and oral). Besides English, many documents (contracts/payment and supporting documents) are concluded in Romanian.*

Best value will be decided using the scoring method (technical scoring +financial scoring). That means that each proposal will be evaluated and scored against the evaluation criteria and evaluation sub-criteria, which are stated in this RFP. If technical scores of several proposers reaching or exceeding the minimum pass score are determined to be equalor nearly equal, cost will become the determining factor.

Inotek Foundation may award the contract to a higher priced offeror if a determination is made that the higher technical score of that offeror merits the additional cost/price.

The rating of each proposal will be defined based on the accumulated total scoring: technical and financial scorings. The priority will be given to highest scored offers, in the limits of the available budget.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **#** | **Evaluation Criteria and Sub-criteria** | **Maximum points** | | |
| **1** | **TECHNICAL EVALUATION\*** | **Up to 175 pts** | | |
| **1.1** | **Technical offer (approach)** | **Up to 75 points** | | |
|  | **Company’s past performance information** |  | **Up to 50 points** |  |
| ***1.2*** | *-minimum 5 years of experience in audit, including as per ISA* | ***Up to 50 pts***  *5 years – 30 pts, 4 pts for each additional year – up to 5 additional years/10 pts;* | | |
| **1.3** | **Qualified Staff:**  **Minimum 1 (one) certified auditor** | **Up to 50 pts** | | |
| ***1.3.1*** | ***Certified Senior auditor/Team leader*** | ***Up to 30 pts*** | | |
|  | *-Minimum 5 years of experience in auditing,*  *including mandatory experience auditing of donor funded projects/NGOs* | ***Up to 25 pts***  *5 years – 20 pts, 1 pts for each additional year – up to 5 additional years pts;* | | |
|  | *-Linguistic skills* | ***5 pts*** | | |
|  | *English* | *2.5 pts* | | |
|  | *Romanian* | *2.5 pts* | | |
| ***1.3.2*** | ***Certified auditor*** | ***Up to 20 pts*** | | |
|  | *- Minimum 3 years of experience in audit* | ***Up to 15 pts***  *3 years – 12 pts, 1 pts for each additional*  *year – up to 3 additional years pts;* | | |
|  | *-Linguistic skills* | ***5 pts*** | | |
|  | *English* | *2.5 pts* | | |
|  | *Romanian* | *2.5 pts* | | |
| **2** | **OVERALL COST PROPOSAL PROVIDED** | **Up to 75 points** | | |
|  |  | minimum offer - 75 pts;  Evaluated offer pts = (lowest offer $ x 75  pts)/evaluated offer | | |
|  | **Total Points = Technical + Cost Approach** | **250 points** | | |

**\*Minimum technical passing score – 123 pts (70% of the technical score).** Offers that do not reach the minimum pass score will not be considered for further evaluation.

## Negotiations

Best and final price quotations are requested from all offerors. It is anticipated that awards will be made solely on the basis of these original quotations. However, Inotek Foundation reserves the right to conduct negotiations and/or request clarifications prior to awarding a subcontract.

## Terms and Conditions of Subcontract

This is a Request for Proposals only. Issuance of this RFP does not in any way obligate Inotek Foundation or the Donor to award a subcontract, nor does it commit Inotek Foundation or Donor to pay for costs incurred in the preparation and submission of a proposal.

This solicitation is subject to the Draft Order Terms and Conditions detailed in Section 2. Any resultant award will be governed by these terms and conditions. Inotek Foundation reserves the right to make revisions to the content, order, and numbering of the provisions in the actual subcontract document prior to execution by Inotek Foundation and the selected awardee. Issuance of a subcontract award is subject to availability of sufficient funds.

## Section 2. Background, Scope of Work, Deliverables and Deliverable Schedule

* 1. **Specifications**

Inotek Foundation, founded in November 2023, runs the Inotek – EU Innovation Centre Cahul, which aims to advance the digital economy in southern Moldova by fostering innovation and entrepreneurship through partnerships among the private sector, public institutions, and educational bodies. It also promotes technology, creative problem-solving, and STEM education, while supporting the establishment and growth of start-ups, enhancing their capabilities, and preparing them for investment.

## Background of the Project

Inotek Foundation entered into a grant agreement with Sida, Swedish International Development Agency for a 3-year project from July 1, 2024 to June 30, 2027.

## The specific project objectives are:

1. Generate incomes that will cover 50% of the total Inotek expenses within three years.
2. Stimulate a 5% increase in the overall growth of the IT industry in the southern region of Moldova.
3. Enable 11,500 students to access STEM subjects and programmes.
4. Provide 1,500 community members with knowledge-sharing programmes and events
5. Support 20 entrepreneurs to integrate digital solutions into their businesses.
6. Empower 100 entrepreneurs by building their capacity for fundraising.
7. Assist 12 young talents in establishing and accelerating startups.

## Scope of Work

The Audit Company is expected to perform the audit of the financial statements of the INOTEK FOUNDATION for the period **July 01, 2024 to June 30, 2025**, in accordance with provisions SNT / [ISRS 4400 *Engagements to perform Agreed-upon Procedures regarding*](https://www.ifac.org/_flysystem/azure-private/publications/files/B010%202013%20IAASB%20Handbook%20ISRS%204400.pdf)[*Financial Information*](https://www.ifac.org/_flysystem/azure-private/publications/files/B010%202013%20IAASB%20Handbook%20ISRS%204400.pdf)and Procedures as per Conditions for grands.

The Audit Company shall contact Inotek Foundation for additional details necessary to establish the price. Please refer to the ToR for details on the required services.

## Delivery Requirements

The audit of documents should be performed in the office of Inotek centre: 1, Piata Independentei Street, Cahul, Moldova. The period of the audit shall be about 14 days. Documents verification should be planned for July 15 - 31, 2025.

The audit company shall provide the final version of the audit report both in hardcopy and electronic versions:

* + - Electronic audit report – to be submitted in the electronic format and way agreed with Inotek Foundation.
    - Hardcopy Audit Report - in 4 (four) copies should be submitted to Inotek Foundation (1, Piata Independentei Street, Cahul, Moldova): 3 (three) hard copies in EN + 1 (one) hard copy in RO.

The following deliverables are expected under this assignment:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Deliverables** | **% of cost** | **Time frame** |
| **1** | Draft Audit Report | 80% of total cost | By July 25, 2025 |
| **2** | Approved Final Audit Report both in hardcopy and  electronic versions:  - Hardcopy Audit Report - in 4 (four) copies should be submitted to INOTEK FOUNDATION (1, Piata Independentei Street, Cahul, Moldova)  *3 (three) hard copies in EN + 1 (one) hard copy in RO*  - Electronic version of the Audit Report | 20% of total cost | By July 31, 2025 |

To make it easier for audit firms to comply with the International Standards on Auditing (ISA) and the Sida’s Standard Terms of Reference for Annual Audit of Project/Programme Support including. ISRS 4400 as part of its response to this RFP, each offeror is expected to provide an **estimate (in calendar days)** of the delivery and execution timeframe (after receipt of order). The delivery estimate presented in an offer in response to this RFP must be upheld in the performance of any resulting contract. The delivery estimate presented in any offers in response to this RFP must be honest, accurate, and upheld in the performance of any resulting contract or order.

## Inspection and acceptance of Audit Work and the Report

The statement of work, audit program (including detailed audit steps), and the draft report will be subject to approval and acceptance by the Inotek Foundation.

## Section 3. Payment and Financial Ogligations

* 1. **Contract Price**

The Contractor shall complete all work (including furnishing all labor, material, commodities, equipment, and services) required under this contract for the fixed price indicated in the offer. This price shall include all equipment, commodities, shipping costs, licenses, permits, administration costs, labor costs, materials, overhead, profit, and all other costs.

The Contractor will be paid the installment amounts listed under the column named “Payment Amount” only upon successful completion and acceptance by Inotek Foundation of all corresponding deliverables.

## Payment Terms

Inotek Foundation will pay the total price through a series of installment payments as provided in Article 1.9 above, after Contractor’s completion of the corresponding deliverables and Inotek Foundation acceptance thereof. The Contractor may submit invoices for deliverables that have been accepted and approved by the authorized Inotek Foundation representative. Inotek Foundation will pay the Contractor’s invoice within fifteen (15) working days after the following conditions have been fulfilled:

1. the Contractor has delivered a proper invoice,
2. and certificate of acceptance of deliverables is signed by both parties;

Payment will be made in MDL paid via wire transfer to the account specified in the Contractor’s invoice. Payment of unpaid balances will be made upon completion and final acceptance of all works and deliverables by Inotek Foundation. Any invoices for services rendered and deliverables submitted—but not accepted by Inotek Foundation—will not be paid until the Contractor makes sufficient revisions to the deliverables such that Inotek Foundation may approve the deliverables and thus the invoice.

## Payment Will be as Follows:

* 80% upon the submission of the draft report, and 20% - within 15 banking days after the approval of the final report by Inotek Foundation and the Donor.

## Invoice Requirements

The Contractor shall present an invoice to Inotek Foundation only for services and/or commodities that have been accepted by Inotek Foundation. The invoice must be an original invoice, submitted to INOTEK FOUNDATION.

## Cooperating Country Fees, Taxes, and Duties

This contract is entered into by Inotek Foundation on behalf of the Project (s) mentioned above, an official program of the mentioned Donors in the Republic of Moldova.

As such, this contract is free and exempt from any taxes, VAT, tariffs, duties, or other levies imposed by the laws in effect in Republic of Moldova. The Contractor shall not pay any host country taxes, VAT, tariffs, duties, levies, etc. from which this Donor programs are exempt. If any exempt charges are paid by the Contractor, they will not be reimbursed to the Contractor by Inotek Foundation. The Contractor shall immediately notify Inotek Foundation if any such taxes are assessed against the Contractor or its subcontractors/suppliers at any tier.

The Contractor is responsible for payment of all applicable taxes, as prescribed under the applicable laws, associated with wages/salaries/compensation for services rendered by individuals employed by the Contractor and who are directed to work as required under this Contract. The Contractor is liable for payment of all applicable taxes associated with revenues (profit), and other such taxes, fees, or dues for which Contractor is normally responsible as a result of operating its business.

## Set-Off Clause

Inotek Foundation reserves the right of set-off against amounts payable to Contractor under this contract or any other agreement in the amount of any claim or refunds Inotek Foundation may have against theContractor.

## Grounds for Disqualification

A firm may be excluded from the evaluation and the award of a contract, who:

1. is bankrupt or is being wound up, whose affairs are being administered by court, who has entered into an arrangement with creditors, who has suspended business activities or who is subject of an injunction against running business by court;
2. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by court, or for an arrangement with creditors or of any other similar proceedings;
3. has been convicted of an offence concerning his professional conduct by a court;
4. has been found guilty of grave professional misconduct; or
5. has not fulfilled obligations relating to payments of taxes or social security contributions.

Economic resources provided by the EU under this Project shall not be made available to, or for the benefit of, third parties - whether entities, individuals or groups of individuals - designated by the EU as subject to restrictive measures in the lists provided at [www.sanctionsmap.eu (](http://www.sanctionsmap.eu/)“EU Restrictive Measures”) or designated by UN as subject to restrictive measures in the list provided at [www.scsanctions.un.org](https://scsanctions.un.org/search/).

## Anti-Kickback

1. Definitions:
   * *Kickback,* as used herein, means any money, fee, commission, credit, gift, gratuity, thingof value, or compensation of any kind, which is provided, directly or indirectly, to Inotek Foundation, Project or any of its employees, the Contractor or Contractor employees, or vendors in any way related to the performance or subsequent activities of this contract, for the purpose of improperly obtaining or rewarding favorable treatment in connection with this subcontract.
   * *Person*, as used in this article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
   * *Contractor employee*, as used in this article, means any officer, partner, employee, or agent of the Contractor.
2. The Contractor and its employees, whether directly or indirectly engaged in the performance of this contract, agree to abide legal provisions which prohibit any person from providing or attempting to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the contract price charged by the Contractor to Inotek Foundation.

When the Contractor has reasonable grounds to believe that a violation described in paragraph

(b) of this provision may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to Inotek Foundation, who shall forward the report to the Donor, as required.

The Contractor agrees to cooperate fully with any relevant Moldovan/EU Agency investigating a possible violation described in paragraph (b) of this article.

Inotek Foundation may offset the amount of the kickback against any monies owed by Inotek Foundation under this fixed price contract or order the monies withheld from future payments due the Contractor.

The Contractor agrees to include the substance of this article in any contract it may issue under this contract.

## Terrorist Financing Prohibition

The Contractor (including its employees, consultants, and agents) by entering into this contract certifies that it does not engage, support or finance individuals and/or organizations associated with terrorism.

## Compliance with Applicable Laws and Standards

The Contractor shall perform all work, and comply in all respects, with applicable laws, ordinances, codes, regulations, and other authoritative rules of Sweden, European Union and Moldova and its political subdivisions and with the standards of relevant licensing boards and professional associations. The Contractor shall also comply with the applicable EU and Sweden regulations governing this contract, which are incorporated by reference into this contract, Clauses Incorporated by Reference.

**5.Indemnity and Contractor Waiver of Benefits**

A. The Contractor waives any additional benefits and agrees to indemnify and save Harmless Inotek Foundation, Donor, their officers, directors, agents, and employees from and against any and all claims and liability, loss, expenses, suits, damages, judgments, demands, and costs (including reasonable legal and professional fees and expenses) arising out of:

* 1. the acts or omissions of Contractor, its employees, officers, directors, agents or its subcontractors;
  2. injury or death to persons, including officers, directors, employees, agents and subcontractors of Contractor, or loss of or damage to property, or fines and penalties which mayresult, in whole or in part, by reason of the buying, selling, distribution, or use of any of the goods or services purchased or provided under this Contract except to the extent that such damage is due to the negligence of Inotek Foundation;
  3. the infringement or violation of any patent, copyright, trademark, service mark, trade secret, or other proprietary interest of any third party resulting from Inotek Foundation use, distribution, sale, sublicensing, or possession of the goods (including software and all forms of written materials)or services purchased or provided, as authorized hereunder, or from the use or possession of said goods or services by Inotek Foundation, Donor, as authorized hereunder; or false claims submitted by Contractor or its subcontractors under this Contract or as a result of a Contractor misrepresentation of fact or fraud by Contractor.

1. Contractor shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Contractor has notice or is given prompt written notice of such claim or suit and, further, that Contractor shall be given necessary information, reasonable assistance and the authority to defend such claim or suit. Contractor shall not settle, compromise or discharge any pending or threatened suit, claim or litigation, arising out of, based upon, or in any way related to the subject matter of this contract and to which Inotek Foundation is or may reasonably be expected to be a party, unless and until Contractor has obtained a written agreement, approved by Inotek Foundation (which shall not be unreasonably withheld) and executed byeach party to such proposed settlement, compromise or discharge, releasing Inotek Foundation from anyand all liability.
2. If any of the goods or services provided by Contractor hereunder, including without limitation software and all forms of written materials, become the subject of a claim of infringement or violation of a third party's intellectual property, privacy and/or proprietary rights, Contractor shall, at its own expense, use its best efforts—
   1. to procure for Inotek Foundation the right to continue use and, if authorized under this Contract,distribution of the infringing goods or services or,
   2. to modify the goods or services to make them non-infringing, or to replace them with equivalent, non-infringing counterparts.

If none of the above-mentioned can be successfully implemented, then Contractor shall refundto INOTEK FOUNDATION all monies paid to the Contractor for the infringing goods and services.

## Intellectual Property Rights

The ownership of all copyright and other intellectual property rights in respect of any data compilations, research, spreadsheets, graphs, reports, diagrams, designs, work products, software, or any other documents, developed in connection with this contract will exclusively vest in or remain with Inotek Foundation, which shall have all proprietary rights therein, notwithstanding that the Contractor or its employees may be the author of the intellectual property. All documents relating to the intellectual property or otherwise connected with this fixed price contract, the services, or duties must be returned or delivered to INOTEK FOUNDATION at the time of the expiration or termination of the contract. The Contractor agrees not to publish or make use of any of the intellectual property, or documents relating thereto, without the prior written approval of INOTEK FOUNDATION and proper attribution.

**6. Modifications**

Modifications to the terms and conditions of this subcontract, including any modification to the scope of work, may only be made by written agreement between authorized personnel of both Parties. Each Party shall give due notice and consideration to any proposals for modification made by the other Party.

## 7.Changes

According to Inotek Foundation procurement procedures, Inotek Foundation may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

If any such change(s) causes an increase or a decrease in the cost, or the time required for the performance, or any part of the work under the contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this contract must be asserted within 30 (thirty) days from the date of receipt by the Contractor of the modification or change.

## 8.Assignment and Delegation

This contract may not be assigned or delegated, in whole or in part, by the Contractor without the written consent of Inotek Foundation. Absent such written consent, any assignment is void.

## 9.Termination

Inotek Foundation reserves the unilateral right to terminate this fixed price contract at any time, paying for all deliverables completed at the time of termination and a pro-rata share of any deliverable in progress, in accordance with Inotek Foundation procurement procedures.

In the event that the Contractor fails to make progress so as to endanger performance of this fixed price contract, or is unable to fulfill the terms of this fixed price contract by the completion date, the Contractor shall notify Inotek Foundation forthwith and Inotek Foundation shall have the right to summary termination of this fixed price contract upon written notice to the Contractor.