

GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions are hereby incorporated by reference into the Customer Support Agreement or Order (each, the “*Agreement*”) between NovaTech Services, Inc. (“*NovaTech*”) and you (the “*Customer*”).

1. Definitions

1.1. “*Covered Systems*” shall mean the equipment and systems that are identified in the “*List of Covered Systems*” section of this Agreement.

1.2. “*Hardware*” shall mean any and all consumable parts, spare parts, equipment, material or other goods.

1.3. “*Order*” shall mean any quotation, release, purchase order or other document requesting or directing NovaTech to supply Hardware or Services.

1.4. “*Services*” shall mean all work, labor and other services (excluding Hardware) to be provided by NovaTech under this Agreement, which are more specifically identified in the “*Quotation*”. A form of the Quotation is attached hereto as Exhibit “A” and by this reference incorporated herein. To the extent there are conflicting terms between this Agreement and the Quotation, the terms of the Quotation shall control.

1.5. “*Term*” shall mean the period of time from the Commencement Date through the Expiration Date (the “*Initial Term*”), plus any subsequent renewal term(s) (the “*Renewal Term(s)*”).

2. Systems Audit: Conditions to Service Coverage. Unless the Covered Systems have been (i) under a NovaTech warranty or (ii) under a similar NovaTech service program within thirty (30) days before the date the Services herein are to begin, then all Covered Systems shall be subject to an inspection by NovaTech to verify the integrity, functionality, operability and condition of the Covered Systems to the reasonable satisfaction of NovaTech (“Systems Audit”). Prior to the commencement of any Services, all non-conforming items identified in the Systems Audit must be corrected. If NovaTech corrects non-conforming items identified in the Systems Audit, all such goods and work shall be charged at NovaTech's then current published time and materials rates.

3. Additional and Excluded Services. Notwithstanding anything to the contrary in this Agreement:

3.1. Additional Services: In the event Customer requests different or additional Hardware and Services than those described in this Agreement, then such other Hardware and/or Services shall be charged to Customer at NovaTech's then current time and materials rates.

3.2. Hours of Services: NovaTech will provide services during normal business hours and non-holiday workdays (8AM – 5PM, Monday through Friday). In the event Customer requests Services outside the hours of 8:00 a.m. to 5:00 p.m., then Services shall be charged to Customer at NovaTech's then current after-hours labor rates which shall be made available to Customer upon request. In the event Customer requests 24/7 support, the parties will agree to a supplemental agreement to be executed in writing with applicable terms and conditions including, without limitation, applicable fees.

3.3. Excluded Services: NovaTech's ability to provide Services under this Agreement is contingent upon the Customer's proper use and care of Covered Systems. NovaTech shall be under no obligation to provide any additional Hardware or Services which are required as a result of (i) non-conformance with the Systems Audit, (ii) Customer's improper use, abuse, accident, or neglect of the Covered Systems, (iii) alterations, modifications, or repairs to Covered Systems performed by someone other than NovaTech (or personnel suitably trained and certified by NovaTech, or personnel suitably trained and certified by the manufacturer of the Covered Systems), (iv) causes external to the Covered Systems, such as failure to maintain environmental conditions within the operating range specified by the manufacturer of the Covered Systems, or (v) attachment or installation of Hardware to the Covered Systems not previously approved by NovaTech. Any Hardware or Services required to be supplied by NovaTech as a result of such events or occurrences shall be charged to Customer at NovaTech's then current time and materials rates.

4. System Management and Monitoring Services (if applicable)

4.1. NovaTech will monitor and manage any and all Covered Systems such as file sharing, printer sharing, dynamic host configuration (DHCP), firewall security, virtual private networking, email, backup power systems, and data backup/recover services. This service will be delivered to the extent possible given the current Customer computing configuration.

4.1.a. Monitoring - NovaTech will monitor all servers and clients. When a problem is observed by NovaTech, NovaTech will either remotely fix the problem or inform on-site personnel of action that must be taken.

4.1.b. NovaTech will install non-invasive monitoring software on Customer's Covered Systems.

4.1.c. Antivirus checks - NovaTech will routinely check each machine to ensure that antivirus software is up to date and functioning properly.

4.1.d. Scanning - NovaTech will conduct routine security scans of the network (both inside and outside of the firewall), advise of any possible problems, and repair where possible.

4.1.e. Help desk/technical support - NovaTech will provide help desk technical support as required.

4.2. NovaTech will maintain and service Covered Systems to provide effective operations and system availability. Performance issues and downtime issues will be responded to as part of the monthly service. NovaTech will respond to these issues in a reasonable time within the working hours defined Hours of Service. NovaTech may define project requirements in order to maintain effective operations and system availability. Customer will determine the extent and timing of implementation of recommendations, and will contract with NovaTech as needed on a project basis.

4.3. Covered System personal computer support is provided for (i) the Operating System, and (ii) Customer email software (i.e. Microsoft Outlook, Microsoft Outlook Express, Apple). NovaTech will keep the Operating System and Customer's email software current within a reasonable time after Microsoft/Apple makes updates available.

4.4. NovaTech will coordinate break/fix maintenance of all Covered Systems, including Servers, Workstations (Desktops and Laptops), Hubs, Switches and Routers. NovaTech may request that mobile devices be sent to another/depot location for servicing. Manufacturer's warranty will be used on all equipment and define the repair service available.

4.5. NovaTech will provide basic support for Smart Phones, PDA's and Mobile devices to establish connection with the service provider. Integration with contracted services and covered systems will be provided to the extent possible as defined by the manufacturer and service provider.

4.6. NovaTech will provide support and maintenance of printer/scanner software and communication.

4.7. Covered System server support is provided for the Operating System. NovaTech will keep the Operating System and all Covered Systems software current within a reasonable amount of time after Microsoft, Apple, Red Hat or any Open Source groups make updates/new versions available. NovaTech will conduct a review of the proposed upgrade in advance for Customer to determine compatibility with installed or planned business applications.

4.8. NovaTech will provide basic, best effort support for business operations software applications, custom software applications, and non-infrastructure software/applications running on the Covered Systems (e.g. Microsoft Word, Excel, Internet Explorer, Intuit QuickBooks).

4.9. NovaTech will work with Customer to define computer equipment requirements as part of the ongoing relationship. Any equipment purchases will be reviewed with Customer and approved in advance. Customer will

determine the extent and timing of implementation of recommendations and contract with NovaTech as needed on a project basis.

4.10. Customer project plans requiring NovaTech will be contracted based on the NovaTech project rates. These will cover, but not be limited to, application software installations and upgrades for business operations. Both Customer and NovaTech will agree to project work and estimated fees prior to any performance of services. A standard form and signature process will be used for approval process.

4.11. If included in the Order, NovaTech will provide offsite data backup management services. Data will be transferred to the NovaTech Data Center through the NovaTech specified software data exchange environment. NovaTech will maintain a copy of the Customer data in the NovaTech Data Center. NovaTech will create data backups of the Customer data as described in the Order.

4.12 Customer Responsibilities and Assumptions

4.12.a. All licensing for third party software, including but not limited to Microsoft Windows (W10, W7, Vista, XP), Microsoft Server (2019, 2016, 2012, 2008, and SQL), Apple, and all desktop applications (e.g. Microsoft Office, etc.) shall be the sole responsibility of (i) Customer to the extent such product is purchased or otherwise deployed by Customer for its use, or (ii) sole responsibility of NovaTech to the extent purchased or otherwise deployed and used in the scope of providing Customer the Services as contemplated by this Agreement. NovaTech and Customer will in no way be liable for any costs or expenses that arise from violating such licensing agreements as set forth in the preceding sentence. Customer and NovaTech agree to and shall indemnify, defend, and hold harmless the other party and its officers, shareholders, members, employees and agents for and against all claims brought by any parties relating to Customer's or NovaTech's failure to secure any necessary licenses as set forth in this Section 4.12.

4.12.b. Customer is responsible for keeping and maintaining backups of any data vital to the operation of the Customer's business. NovaTech will work with Customer for setup and method of onsite/offsite backups and procedures for Customer to monitor and maintain.

4.12.c. NovaTech is not responsible for the uptime of Customer's Internet Service Provider, but will work with the ISP or another carrier to get the Customer back online following notice by Customer of any connectivity issues.

4.12.d. Customer is responsible for management, monitoring, and operations of Customer's business operations and software applications, custom software applications, and non-infrastructure workstation software applications (e.g. Microsoft Word, Excel, Internet Explorer, Intuit QuickBooks, etc.).

4.12.e. Customer is responsible for determining compatibility of computer and network software versions with Customer's business operations applications. NovaTech will work with Customer to identify and confirm compatibility.

4.12.f. Customer is responsible for printer/scanner/copier/fax hardware maintenance, including cleaning, clearing jams, and cartridge replacement.

4.12.g. Customer needs to staff/identify an on-site office manager capable of executing computer instructions under the directions of NovaTech staff.

4.12.h. Customer will notify NovaTech of any and all new Covered Equipment to be included in the Services. Should any service be required of equipment not on Covered Equipment list, NovaTech will service at project service rates.

4.12.i. Customer will advise NovaTech of all personnel changes that affect usernames and network access.

4.12.j. Customer will enforce published network rules and acceptable use policy.

4.12.k. Customer will provide NovaTech 24-hour access to Customer network.

5. Staffing & Qualifications

5.1. Qualifications: Qualified, efficient, properly trained and adequately supervised NovaTech personnel shall perform all Services under this Agreement. NovaTech will conduct commercially reasonable reference and background checks on all personnel. NovaTech shall be allowed to contract with 3rd party service providers to perform services on behalf of NovaTech.

5.2. Personnel Replacement: NovaTech is responsible for staffing decisions and may replace or substitute its service personnel at any time. Customer may, at any time, remove a member of NovaTech's service personnel from servicing that Customer for good reason, provided that a reasonably detailed written explanation supporting such request is provided by Customer to NovaTech.

5.3. Business Continuity: NovaTech internal operations is set up with business continuity services, which affords multiple independent access paths for delivering Customer Services. NovaTech business operations continuity will be managed through internal backup systems and redundancy.

5.4. Data Confidentiality: NovaTech shall hold all Customer data, processes, business details or any other proprietary and confidential information ("Confidential Information") in strict confidence. NovaTech shall not disclose such Confidential Information to any outside parties and shall not use any Confidential Information for any purpose other than in connection with providing the Services for the benefit of Customer. NovaTech may disclose the Confidential Information to its employees and agents who (i) have been informed of the Confidential nature of such Confidential Information and have agreed to the terms applicable to the Confidential Information, and (ii) who have a bone fide need to know for the purposes of providing the Services, but only to the extent necessary for such employees and agents to provide the Services for Customer. NovaTech shall take diligent steps to educate employees and agents regarding the confidential nature of the Confidential Information, and NovaTech's duties in connection therewith, to ensure that such Confidential Information shall remain confidential and shall not be disclosed to third parties. NovaTech shall not remove any Confidential Information from the Customer's premises except as may from time to time be necessary to provide the Services. NovaTech shall not use in any other manner such Confidential Information, provided however, that the restrictions in this Agreement shall not apply with respect to any portion of such Confidential Information:

5.4(a) which corresponds in substance to that developed by NovaTech and in the possession of NovaTech prior to its receipt of same from Customer;

5.4(b) which at the time of disclosure thereof by Customer to NovaTech is, or thereafter becomes, through no act or failure to act by NovaTech, part of the public domain by publication or otherwise;

5.4(c) which corresponds in substance to that furnished to NovaTech by others as a matter of right without restriction on disclosure; or

5.4(d) which corresponds to that independently developed by any of NovaTech's employees or agents who have not had access to or who have not been informed of the substance of the Confidential Information furnished to NovaTech; and

provided further, that the furnishing of Confidential Information hereunder and/or the occurrence of (a), (b), (c) or (d), above, shall not be construed as granting any rights to NovaTech, either express or implied, by Customer with respect to such Customer's ownership in or to the Confidential Information, or portions thereof, furnished hereunder. Further, this Agreement shall not affect NovaTech's obligation to disclose the Confidential Information or portions thereof

to the extent such disclosure is compelled by governmental action or judicial process; however, in the event NovaTech's counsel believes NovaTech is legally compelled to disclose any Confidential Information or portions thereof, NovaTech shall provide written notice to Customer so that Customer may, if it so desires, take such actions as it deems appropriate to seek a protective order or other appropriate remedy.

5.5 **Duty to Safeguard Confidential Information.** NovaTech will hold the Confidential Information in the strictest confidence and will not disclose or divulge any of the Confidential Information to anyone other than its agents as set forth herein, unless NovaTech has received Customer's prior written consent. NovaTech agrees to take all reasonable measures to prevent disclosure of the Confidential Information to others. NovaTech agrees to take all necessary action to ensure that the Confidential Information is not used for any purpose other than to fulfill the purposes of this Agreement and to provide the Services.

5.6 **Return of Confidential Information.** Promptly upon the written request of Customer, or in the event either party terminates this Agreement, NovaTech shall, at the written request of Customer, promptly return and deliver such Confidential Information to Customer, or if so directed by Customer, destroy and erase all of the Confidential Information, physical media, documents, memoranda, notes and other writings whatsoever prepared by NovaTech or its employees and agents and all copies thereof. Such erasure and destruction shall, upon written request, be certified in writing to Customer by NovaTech.

5.7 **Ownership of Confidential Information.** All Confidential Information and physical media containing Confidential Information delivered or disclosed shall be and remain the property of the Customer, notwithstanding the disclosure thereof to NovaTech. Nothing contained in this Agreement shall be construed as granting or conferring any right to NovaTech, by license or otherwise, express, implied, or otherwise, with respect to the Confidential Information.

5.8 **Prompt Notice of Disclosure.** In the event that NovaTech or any of its, his or her agents discloses any of the Confidential Information in violation of this Agreement, NovaTech agrees to provide Customer with prompt, written notice of such disclosure so that Customer may seek appropriate remedies.

5.9 **Non-Disclosure of Third Party Confidential Information.** Neither party hereto shall disclose to the other any information which is held subject to an obligation of confidence to any third person.

6. Renewal & Termination

6.1. **Renewal:** Immediately following the Initial Term, this Agreement shall be renewed automatically for successive additional 1 year Renewal Terms until either party provides written notice of termination at least thirty (30) days prior to the expiration of the then current Renewal Term, or terminates this Agreement as otherwise provided herein.

6.2. **Termination of Agreement without Cause:** Notwithstanding anything to the contrary in this Agreement, NovaTech may terminate this Agreement upon sixty (60) days prior written notice for any reason, or for no reason.

6.3. **Termination of Agreement for Cause:** In the event that either party to this Agreement (i) admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature, (ii) becomes the subject of any voluntary or involuntary proceeding in liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors or pursues any other remedy under any other law relating to relief for debtors, (iii) fails to make any financial payment within three (3) days of the date due, or (iv) breaches a material obligation under this Agreement and fails to cure such breach within thirty (30) days after receipt of notice from the non-defaulting party identifying such breach, then such non-defaulting party may immediately terminate this Agreement upon written notice.

7. Service Fees

7.1. **Initial Term Fees:** The fees agreed upon for Services during the Initial Term are firm, and not subject to change without mutual agreement of the parties.

7.2. **Renewal Term Fees.** The fees for Services to be rendered in any Renewal Term shall be set by NovaTech upon thirty (30) days prior notice and approval of the amended fees by Customer; provided that, if Customer does not object in writing to such fees within thirty (30) days after such notice, the fees shall be deemed agreed upon, and shall be fixed at the amount(s) set forth in NovaTech's notice. If Customer does object to such fees within its thirty (30) day period to respond, then the parties shall meet and attempt to mutually agree (within thirty (30) days after the date of Customer's objection) on the amount of such fees. If the parties fail to so agree, then NovaTech may elect to continue under the fees agreed to for the previous period, or terminate this Agreement immediately upon written notice to Customer.

7.3. **Rate Adjustments:** Notwithstanding anything to the contrary in this Agreement, NovaTech may adjust the fees set for Services at any time that the Customer changes the scope of the Services. Nothing herein shall preclude NovaTech from adjusting its standard time and material rates, which are not governed by this Agreement.

8. Invoicing & Payment

8.1. **Invoices:** Unless otherwise agreed, payment terms shall be net ten (10) days from the date of invoice, payable in U.S. dollars, without setoff or demand. NovaTech reserves the right in its reasonable commercial judgment to place Customer on credit hold, in which event NovaTech will promptly inform Customer and may delay the provision of Services. Interest will accrue from the date payment is due at the lesser of fifteen percent (15%) per annum or the maximum amount allowed by law. If NovaTech has offered a special discount based on a volume, multi-year, or other commitment, and Customer fails for any reason to meet that commitment, then NovaTech reserves the right to bill-back pursuant to an invoice the full amount of any such discount and Customer agrees that such amount shall be due and payable upon receipt of such bill-back invoice.

9. Taxes. Fees set for Services shall be exclusive of any and all duties, and state and local sales, use, excise or similar taxes, which, if applicable, shall be paid by Customer. NovaTech agrees to cooperate in a reasonable manner with Customer for the purpose of minimizing all taxes which are to be paid directly or indirectly by Customer.

10. Warranty

10.1. NovaTech warrants that all Services provided pursuant to this Agreement shall be free from all defects in workmanship for a period of ninety (90) days from the date of such Service. Any Hardware installed by NovaTech shall be covered by the manufacturer's warranty only. Customer shall promptly notify NovaTech of any nonconforming Hardware and/or Service and all availability for correction.

10.2 If any Service provided hereunder does not comply with the above warranty, Customer shall promptly notify NovaTech, and NovaTech shall correct any defect by re-performing the Service at NovaTech's expense. This warranty shall be void if Customer performs, or otherwise permits a non-NovaTech employee to perform, any Services or other labor to the Covered Systems. Further, NovaTech shall not be responsible for any natural disasters, fires, viruses/worms, holes in network software security that make certain services/data vulnerable to hackers, or other system hazards not caused by NovaTech's negligence or willful misconduct.

10.3 If any Hardware provided hereunder fails during the manufacturer's warranty period, Customer shall promptly notify NovaTech, and NovaTech shall arrange for the exchange and installation of such Hardware at Customer's expense; however, if such Hardware fails due to NovaTech's incorrect installation of such Hardware, it shall be exchanged and installed at NovaTech's expense.

10.4. The provisions of this warranty section constitute Customer's sole and exclusive remedy for damage caused by NovaTech's furnishing of nonconforming or defective Hardware and/or Services, and NovaTech shall not in any event be liable for any special, indirect, consequential, or incidental damages of any kind or amount. In no case shall NovaTech's liability exceed the unit price or fee allocable to the Hardware or Service in question. The foregoing warranties are exclusive of all other warranties whether written, oral, express or implied, including any warranty of merchantability, noninfringement or fitness for a particular purpose.

11. Miscellaneous Provisions

11.1. Assignment: Neither party shall assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, except that NovaTech may assign its right to payment and/or may assign this Agreement to an affiliated company and/or may subcontract the provision of Services hereunder.

11.2. Attorneys' Fees: In any arbitration or judicial proceeding to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable expenses associated with such proceeding, including reasonable attorneys' fees and court costs.

11.3. Entire Agreement: This Agreement, together with all Exhibits, Customer Support Agreements and Orders hereto, including without limitation all Quotations, constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous proposals, communications or promises, whether written or oral, with respect to such subject matter.

11.4. Governing Law: This Agreement shall be governed and construed by the laws of the State of California without regard to conflict of laws considerations. Customer specifically agrees to the exclusive venue and jurisdiction of the County of Santa Clara for any litigation or other dispute resolution modality between the parties relating to this Agreement.

11.5. Relationship of the Parties: NovaTech is an independent contractor under this Agreement. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of legal association between the parties. In no event shall NovaTech's employees or contractors be deemed agents, servants or employees of Customer.

11.6. Severability: If any provision (in whole or in part) of this Agreement be determined by an arbitrator or court of competent jurisdiction to be invalid or unenforceable under applicable law for any reason, the remaining provisions of this Agreement shall remain in effect and be interpreted so as best to reasonably effectuate the intent of the parties.

END OF GENERAL TERMS AND CONDITIONS

EXHIBIT "A"
(Form of Quotation attached)



NovaTech Services, Inc.
P.O. Box 508
Campbell, CA 95009-0508
Phone and Fax: (408) 295-3188
www.novatechservices.com

Quotation		Date		
		Customer		
Qty	Description	Unit Price	Tax	Total
	IT services			
	Notes and Considerations			
	Terms: Net 10			
	Authorized Signature: _____ PO#: _____			
	Name: _____ Title: _____ Date: _____			
		Subtotal		\$0.00
		Shipping (est.)		
		Sales Tax (9.25%)		\$0.00
		TOTAL		\$0.00

** This quote is subject to change without notice. Please call to confirm validity after 10 days. NovaTech Services General Terms and Conditions (http://novatechservices.com/wp-content/uploads/2020/04/NovaTech_Terms.pdf) incorporated by reference into Agreement upon acceptance of this quote. This quote provides updates as agreed to the Agreement and to the extent there are conflicting terms between the Agreement and this Quotation, the terms of this Quotation shall control. Manufacturer's warranty is sole warranty on all third party hardware and software. 15 day return policy and 15% restocking fee for all hardware items. All software sales and labor are non-refundable.