

novacoast

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into on this _____ day of _____, 20____, between NOVACOAST, Inc., a California Corporation, with its principal place of business at 1505 Chapala Street, Santa Barbara, CA, 93101, (hereinafter “NOVACOAST”) and [NAME], (hereinafter “CUSTOMER”), a [STATE] [ENTITY TYPE], with its principal place of business located at _____. The Agreement is entered into between Novacoast and Customer to address all foreseeable issues related to the provisioning of technical services. The parties acknowledge that the Agreement is not all-inclusive and addendums may be required.

CONTROLLING TERMS AND CONDITIONS

In the event of any conflict between DIR Contract No. DIR-TSO-2813, this Agreement and a Statement of Work (SOW), the terms of the DIR Contract shall control.

CUSTOMER’S DUTIES AND RESPONSIBILITIES

CUSTOMER’s duties hereunder shall be as follows:

Furnishing Novacoast engineers with information and data on CUSTOMER operations, activities, and existing systems, as reasonably required to achieve the project objectives;

Providing Novacoast staff with the necessary security access to systems and facilities during the performance of services;

Providing and being solely responsible for the backup of all computer systems;

Providing adequate work space and power sources at each facility where services will be performed;

Providing suitable server platforms with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Novacoast to complete the services described in the relevant

SOW;

Providing and being solely responsible for contract of any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc), and for the costs associated with such facilities;

Ensuring the availability and responsiveness of key personnel needed to support the implementation of the project.

NOVACOAST'S DUTIES AND RESPONSIBILITIES

NOVACOAST agrees to service the CUSTOMER's computer network system, either on-site or off-site, at NOVACOAST's discretion, and to provide other related services as requested.

All services delivered by NOVACOAST will be directed by the relevant NOVACOAST SOW (Exhibit A).

TERMINATION

Customer may terminate the Agreement or a specific Work Order in accordance with Appendix A, Section 11B to DIR Contract No. DIR-TSO-2813.

Upon termination, both parties will cooperate to effect the orderly termination of the Agreement and the return of all materials as provided for in the Agreement. If applicable, Novacoast shall cooperate with CUSTOMER to ensure a smooth transition to a new vendor. In such event, Novacoast will be entitled to receive payment for services performed by Novacoast personnel to effect the orderly termination of the Agreement to the extent such services are approved in advance by CUSTOMER.

RELATIONSHIP

NOVACOAST, its employees, agents and independent contractors shall perform all services as an independent contractor, and nothing in the Agreement is intended to create a relationship of employer/employee, principal/agent or master/servant between the parties. NOVACOAST agrees as an independent contractor to be solely responsible for all taxes attributable to the compensation payable to NOVACOAST hereunder.

NOVACOAST ACKNOWLEDGES AND AGREES THAT NEITHER

NOVACOAST NOR ANY OF ITS EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS FROM CUSTOMER AND MAY ONLY RECEIVE SUCH UNEMPLOYMENT COMPENSATION COVERAGE IF PROVIDED BY NOVACOAST OR SOME ENTITY OTHER THAN CUSTOMER. FURTHER, NOVACOAST IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID TO NOVACOAST PURSUANT TO THE AGREEMENT.

CUSTOMER shall have the option, in its sole discretion, to establish relationships with other persons or entities for services similar to those described herein, unless stated otherwise.

WARRANTY/DISCLAIMER

Vendor represents, warrants and covenants that all Services will be performed with promptness and diligence and will be executed in a workmanlike and professional manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services. Vendor represents, warrants and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services. Vendor represents, warrants and covenants that all Services will satisfy the requirements of the SOW under which they are performed.

CONFIDENTIALITY AND NON-DISCLOSURE

CONFIDENTIALITY:

NOVACOAST acknowledges that CUSTOMER is the owner of valuable trade secrets, and other confidential information. NOVACOAST further acknowledges that the services which Novacoast performs for CUSTOMER are confidential; that to enable Novacoast to perform these services, Customers furnish confidential information concerning their business affairs, their finances, properties, methods of operation and other data; that the good will of CUSTOMER depends, among other things, upon its keeping such services and information confidential and that unauthorized disclosure of the same would irreparably damage CUSTOMER. All such information owned by or concerning Customers of CUSTOMER, and services rendered by CUSTOMER, including any information provided to or developed by NOVACOAST in the

performance of the Agreement, is hereinafter collectively referred to as “confidential information.”

NON-DISCLOSURE:

NOVACOAST agrees that, except as directed by CUSTOMER, NOVACOAST and the employees, agents, and representatives of NOVACOAST will not at any time during or after the term of the Agreement disclose any confidential information to any person, or permit any person to examine or make copies of any reports or documents prepared by NOVACOAST or to come into NOVACOAST’s possession or under NOVACOAST’s control by reason of NOVACOAST’s services hereunder. This includes the use of such confidential information for purposes other than as contemplated by the Agreement. Upon the termination of the Agreement, NOVACOAST will turn over to CUSTOMER all documents, papers, and other matter in NOVACOAST’s possession or under NOVACOAST’s control that contain or relate to such confidential information, including all materials and deliverables, such as working papers, reports, and data, provided to, developed or prepared by NOVACOAST hereunder.

RATES/PAYMENT

Rates, in accordance with Appendix C – Pricing Index to DIR Contract No. DIR-TSO-2813, will be outlined on the Statement of Work as provided for each project.

Customer will pay all pre-approved third party transaction costs associated with services provided hereunder.

Invoices will be mailed to CUSTOMER monthly, unless otherwise noted in the applicable SOW. Customer shall comply with Chapter 2251, Texas Government Code, in making payments to NOVACOAST. Payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

ENGAGEMENT OF SUBCONTRACTORS

The use of all subcontractors must be preapproved, in writing, by NOVACOAST.

NOVACOAST reserves the right to refuse the engagement of subcontractors.

FORCE MAJEURE

NOVACOAST shall not be liable for any delay in performance under the Agreement caused by any Act of God, or any other cause beyond its reasonable control in accordance with Appendix A, Section 11C to DIR Contract No. DIR-TSO-2813.

NOTICES

Unless otherwise provided in the Agreement, any notice required or permitted by the Agreement to either party shall be deemed to have been duly given, if in writing and delivered personally or mailed by first class, registered or certified mail, postage prepaid and addressed to CUSTOMER at the address specified in the preamble to the Agreement or to NOVACOAST in the address specified in the preamble to the Agreement.

GOVERNING LAW / VENUE

The Agreement shall be deemed to have been made in, and shall be construed, pursuant to the laws of the State of Texas. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of the Agreement in any jurisdiction other than that specified in this Section. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

ENTIRE AGREEMENT

CUSTOMER acknowledges and agrees that DIR Contract No. DIR-TSO-2813, Appendices A, B, C & D to said contract, and this Agreement with Exhibits is the complete and exclusive statement of the mutual understanding of the parties, and that these agreements with appendices and exhibits supersede and cancel all previous written and oral agreements and communications relating to the subject matter of the Agreement.

Course of performance will not operate to waive or modify any provision of the Agreement. Any modification or amendment of the Agreement must be signed, in writing, by both parties, and included as an Appendix.

SEVERABILITY

If any part of the Agreement shall be adjudged invalid by any court of competent jurisdiction, that judgment shall not affect or nullify the remainder of the Agreement and its effect shall be confined to the part immediately involved in the controversy adjudged.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement:

Novacoast, Inc.

[CUSTOMER]

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____