

# MASTER SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made effective as of the effective date noted in the signed agreements between by and between NovioQ Inc, a Delaware Corporation ("NovioQ"), and the ("Client").

In consideration of the mutual promises and covenants contained herein, the parties hereto do hereby agree as follows:

## 1. Services/Statement of Work.

- 1.1 The services ("Services") to be provided by NovioQ to Client pursuant to this Agreement shall be set forth in one or more Statements of Work as agreed by the parties from time to time. Each Statement of Work ("SOW") shall set forth the specific Services to be provided, deliverables, if any, Client obligations, the schedule for performance of the Services, payment terms and such other matters as the parties shall agree upon. In the event of any conflict between the terms of the SOW and the terms contained in the body of this Agreement, the terms in the body of this Agreement shall prevail unless the SOW states specifically otherwise in which case the specific terms of the SOW shall prevail but only for purposes of the Services to be provided under such SOW. In addition to performance of specific Client obligations set forth in the SOW, the Client shall cooperate with NovioQ to facilitate the performance of the Services. No change in the Services to be provided pursuant to the SOW shall be effective unless agreed to in writing by the parties.
- 1.2 [Either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such changes in accordance with the change request procedure set forth in the applicable SOW. No changes will be effective unless and until memorialized in a written change order signed by both parties. Developer may from time to time in its discretion engage third parties to perform Services.]

## 2. Fees and Payment.

- 2.1 Unless specifically stated otherwise in the SOW, all Services are provided on a time and materials basis in accordance with the schedule of fees provided in the SOW. NovioQ shall not be liable to Client for any costs to complete any work which exceed any estimate provided by NovioQ at any time unless (i) it is clearly stated in the SOW or another written document signed by NovioQ and specifically referencing this Agreement that NovioQ is providing the Services on a fixed price basis or (ii) such excess costs result from a breach of this Agreement by NovioQ.
- 2.2 NovioQ shall invoice Client for the Services monthly, unless otherwise specified in the SOW, or if any payments are dependent upon achieving specific milestones, then upon completion of such milestones. All invoices shall be due and payable within 30 days after the date of the invoice. TIME IS OF THE ESSENCE WITH RESPECT TO ALL PAYMENTS. Failure to render payment when due shall entitle NovioQ to suspend performance or cancel the Agreement in accordance with the provisions of Section 9 below. All late payments shall be subject to an interest charge of 1 ½ percent per month, or the maximum amount allowed by law, if less. Client shall reimburse NovioQ for all expenses reasonably incurred in the collection of amounts due, including reasonable attorneys' fees.
- 2.3 Client will reimburse NovioQ for expenses reasonably incurred in the performance of the Services upon indication of written supporting documentation, including, without limitation, travel, lodging, reproduction, supplies, long distance and facsimile costs, subject to any limitations contained in the SOW.
- 2.4 Client shall pay all current and future sales, use, transfer, value added and other taxes and duties, whether state, federal, local, or international, levied or imposed as a result of NovioQ' performance of the Services, excluding taxes on or measured with respect to NovioQ' income (collectively "Taxes"). Client shall reimburse NovioQ for any Taxes paid or accrued directly by NovioQ other than Taxes imposed on, or with respect to, NovioQ's income, revenues, gross receipts, personnel, real or personal property, or other assets.

### 3. Confidentiality.

During the course of this Agreement, each party may be given access to information that is proprietary to or confidential to the other party, including but not limited to, information that relates to the other's past, present and future research, development, business activities, products, services and technical knowledge, or that has been identified, orally or in writing, as confidential (the "Confidential Information"). In connection therewith, the following subsections shall apply:

- 3.1 The Confidential Information of the other party may be used by the receiver only in connection with the Services or as otherwise permitted pursuant to this Agreement or the SOW.
- 3.2 Each party agrees to protect the confidentiality of the Confidential Information of the other using at least the same degree of care that it uses to protect the confidentiality of its own proprietary and confidential information of like kind, but in no event to protect such Confidential Information using less than reasonable efforts. Access to the Confidential Information of a party shall be restricted to such personnel of the other party as are reasonably required to have access to the Confidential Information for the purpose of performing this Agreement.
- 3.3 The Confidential Information may not be copied, reproduced, transferred, published, disclosed or displayed without the discloser's prior written consent.
- 3.4 Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) that: (i) was previously known to it without obligation of confidence, (ii) was independently developed by it, (iii) was acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement.
- 3.5 In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, it shall provide prompt notice to the other of such receipt. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to the extent permitted by law.

### 4. Intellectual Property Rights.

- 4.1 Except as specifically provided elsewhere in this Agreement or in the SOW, the parties acknowledge and agree that all work product and deliverables (collectively "Work Product") resulting from the performance of the Services are owned exclusively by Client. Client agrees, however, that, subject to Section 4.2, this does not restrict or limit NovioQ's exclusive rights to proprietary software, documentation, tools, utilities or other such items that were or are developed or otherwise acquired by NovioQ prior to or outside of the performance of the Services under this Agreement or in any SOW (collectively the "NovioQ Intellectual Property") or prevent in any way NovioQ from using its knowledge and expertise to develop products that may be similar to those developed for the Client.
- 4.2 In the event that NovioQ incorporates any NovioQ Intellectual Property into any Work Product, NovioQ hereby grants to Client a non-exclusive, fully paid, perpetual right and license to use the NovioQ Intellectual Property that will allow Customer to use and otherwise exploit the Work Product for Client's own internal business purposes, unless such items is subject to a separate License, in which case the terms of that License shall take precedence over the terms of this Agreement with regards to the intellectual property covered by the License.
- 4.3 NovioQ shall be free to use and employ for itself and others its general skills, know-how, methodologies, algorithms, techniques and expertise relating to the Services and the other activities undertaken by it in the course of this Agreement, whether previously known to it or developed during the course of performance of this Agreement, provided that in doing so it does not breach its obligations of confidentiality under this Agreement.

- 4.4 Additional terms relating to the license or sale of any third party products to be provided to Client may be set forth in the SOW.
- 4.5 In the event that the performance of the Services by NovioQ requires the use of any software or other products to be provided by Client, whether owned by Client or by third parties, Client hereby grants to NovioQ (or will obtain from the appropriate entity) the right and license to use such software or other products for the purposes of performing the Services and Client represents and warrants that it has all rights necessary to permit such use by NovioQ.

## **5. Warranty, Disclaimer and Limitation of Liability.**

- 5.1 NovioQ warrants that the Services will be provided in a good and workmanlike manner and will be performed by qualified personnel in accordance with generally recognized industry standards. NovioQ shall repair or re-perform, at its own cost any Services which do not meet this warranty as evidenced by the failure to meet agreed acceptance criteria; provided that Client provides written notice to such failure within thirty (30) days after the completion of any SOW, and NovioQ is able to verify such failure.
- 5.2 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5.1 ABOVE; ALL SERVICES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. NOVIOQ EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.
- 5.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATING TO LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITY) EVEN IF THE PARTY CLAIMING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOVIOQ'S AGGREGATE LIABILITY FOR ALL ACTIONS AND CLAIMS ARISING OUT OF ANY SOW BASED ON ANY LEGAL THEORY WHATSOEVER SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID TO NOVIOQ BY CLIENT PURSUANT TO SUCH SOW. Client acknowledges that the limitation of liabilities and disclaimers of warranty contained herein constitute an agreed upon allocation of risk between the parties, have been factored into NovioQ's pricing of the Services, and are an essential element of the bargain between the parties.

## **6. Indemnity.**

- 6.1 Each party (the "Provider") hereby agrees to indemnify, defend and hold the other party (the "Recipient") harmless from all claims, actions, losses, costs and liabilities (i) relating to a claim for copyright, trade secret or trademark infringement, and (ii) arising from or relating to the use by Recipient of any software, information, data or materials (the "Materials") of any kind provided by the Provider in the course of the performance of this Agreement. The Recipient shall notify the Provider of any such claim in sufficient time for the Provider to timely respond to the claim and Provider shall assume sole control of the defense of such claim, with such reasonable assistance from Recipient as provider shall request.
- 6.2 The Provider shall have no liability for any claim resulting from (i) Recipient's use of a superseded release of Materials if infringement would have been avoided by the use of a subsequent release of the Materials, which was made available to Recipient; or (ii) for any use of Materials after the Recipient becomes aware of any such claim.
- 6.3 In the event of any claim covered by this Section 6, Provider may either (i) modify the Material to make it non-infringing, or (ii) procure for the Recipient the right to use the infringing Material, or (iii) require the return of the infringing Material. If the return of the Material results in the inability of a party to materially perform the requirements of this Agreement, then the return of the Materials shall constitute a breach of the Agreement by the Provider and the Recipient shall be entitled to such damages for breach as are provided for herein or under applicable law.
- 6.4 THIS SECTION 6 SETS FORTH CLIENT'S SOLE REMEDIES AND NOVIOQ'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES OR WORK PRODUCT) INFRINGES,

MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

7. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year after the completion of the Services, neither party shall solicit for hire or hire any person who, during the term of the Agreement, was an employee or contractor of the other party, without such other party's prior written permission.
8. **Entry onto Premises.** If any employees of either party are required to enter onto the premises of the other party in the course of the performance of this Agreement, such employees shall observe all reasonable regulations and procedures of the other party with respect to use of such other party's premises and such other party shall take reasonable precautions to protect the safety of the employees while on such other party's premises.

9. **Term and Termination.**

9.1 This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the provisions of Section 9.2 below.

9.2 Either party hereto shall be entitled to terminate this Agreement or any SOW at any time by providing [thirty (30) days'] written notice to the other party stating that the Agreement or SOW is terminated. Such notice shall be effective and the Agreement or SOW shall be terminated at such time as the notice is deemed to be given in accordance with the terms of Section 12 below. Upon any such termination, in addition to any other amounts owed to NovioQ, Client shall be required to pay to NovioQ an amount equaling the amount to which NovioQ would have been entitled to payment for the fourteen days following the date on which the Agreement or SOW is terminated based upon NovioQ's planned performance under the Agreement or SOW (the "Termination Payment"). NovioQ shall notify Client in writing of the amount owed pursuant to the preceding sentence and Client shall pay such amount within ten (10) days following the date of such notice. NovioQ shall not be obligated to make any delivery of any Work Product due as of the date of termination of the Agreement or SOW until payment of the Termination Payment. In the event that NovioQ terminates the Agreement as a result of a material breach by Client, NovioQ shall be entitled to receive such additional amounts as to which it is entitled pursuant to applicable law.

9.3 Termination of this Agreement shall not effectuate a termination of any SOW then in effect and not otherwise expressly terminated, and the terms and conditions set forth herein shall continue in effect with respect to any such SOW until their expiration or termination as set forth herein.

9.4 Upon termination of this Agreement NovioQ shall (A) return to Client all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Client's Confidential Information; (B) permanently erase Client's Confidential Information from its computer systems; and (C) certify in writing to Client that it has complied with the requirements of this **Error! Bookmark not defined.Error! Reference source not found.**, in each case to the extent such materials are not required by Developer for continuing Services or SOW hereunder, if any.

9.5 Upon the termination or expiration of this Agreement, the provisions of Sections 2.2,3,4,5,6,7 and 11-20 shall survive and remain enforceable.

10. **Publicity.** Neither party shall use the name or any trademark of the other party in any advertising or marketing materials or for any other commercial purpose without the prior written consent of the other party, except that NovioQ may list Client as a Client of NovioQ in proposals and marketing materials and regulatory filings without providing specific details concerning the Services and the business of Client.

11. **Dispute Resolution.**

11.1 The parties agree to make reasonable efforts to resolve any dispute arising between the parties prior to invoking the procedures set forth in Section 11.2. Such efforts shall include the escalation of the dispute

to a senior management executive of each party who has full authority to resolve the dispute on behalf of the party, or formal mediation between the parties.

11.2 In the event that the parties are unable to resolve the dispute as provided in Section 11.1 above, then either party may submit the dispute to arbitration in accordance with the rules of the American Arbitration Association (the "AAA"). Such arbitration shall be conducted within the Boston, MA metropolitan area. The arbitrator shall, as part of the award, allocate the costs of the arbitration, including attorneys' fees, between the parties. The award in any such arbitration shall be final, binding and conclusive, subject only to such rights of appeal as are provided for under the AAA rules. When final, the award may be entered as a judgment in any court having jurisdiction.

12. **Notice.** Any notices or demands or other communications, which under the terms of this Agreement or under any statute must or may be given or made by either party, shall be in writing and to the respective parties at the address set forth below such party's signature. Either party may change the notice address or addressee by giving written notice thereof to the other party. Notices may be given by first class U.S. mail (postage pre-paid, registered and with return receipt requested), nationally recognized express courier, confirmed facsimile, personally, electronic mail (with confirmation of transmission) or by hand. Notices shall be deemed to have been given on the date of receipt when delivered in compliance with this Section 12 personally or by facsimile or electronic mail, on receipt if delivered by express courier or by hand, and three (3) days after delivery to the United States Postal Service if mailed via first class mail.

13. **Assignment.** Neither party may, without the prior written consent of the other party, assign or transfer this Agreement or any obligation incurred hereunder; provided, however, that either party shall be entitled to assign this Agreement, without the consent of the other party, to an entity that owns a majority of the voting equity interests of the assigning party or an entity in which the assigning party owns a majority of the voting equity interests, or any successor entity to which this Agreement is transferred by operation of law. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect.

14. **Severability.** In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect under the law of any state or of the United States of America, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

15. **Choice of Law, Jurisdiction and Venue.** The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any disputes arising out of or relating to this Agreement shall be exclusively heard in the Federal or State courts sitting in Boston, Massachusetts, and the parties hereby waive any right to challenge such jurisdiction or venue.

16. **Section Headings.** The headings of the Sections herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

17. **Independent Contractors.** All work performed in connection with this Agreement shall be performed by NovioQ as an independent contractor and not as an agent of Client. Nothing contained in this Agreement shall create a joint venture or partnership between the parties and neither party shall have the authority to bind the other party.

18. **Entire Agreement.** This Agreement together with the SOW(s) and all other attachments hereto, if any, constitute the entire agreement between the parties and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both parties, and any provision may not be waived except by a writing signed by the party to be charged.

19. **Waiver.** A waiver of a breach or default under this Agreement shall not be waiver of any subsequent breach or default hereunder. Failure of either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.