

## **SERVICES AGREEMENT**

By executing a Statement of Work (SOW) subject to this Service Agreement (the "Agreement"), Client and Novawatch, each a "Party" and together the "Parties", agree the terms and conditions herein govern Client's purchase and use Novawatch Services.

WHEREAS, Client desires to engage Novawatch for the purpose of obtaining certain services, and Novawatch desires to perform such services in accordance with the terms and conditions herein provided and pursuant to one or more Statements of Work that may be entered into between the parties from time to time hereunder.

NOW, THEREFORE, the parties agree as follows:

### **1. DEFINITIONS**

"Delegate" means the named person authorized to make Services decisions on behalf of Client.

"Deliverables" means the products, materials, reports, software, models, data, or other items to be provided by Novawatch to Client, as set forth and described in the Statements of Work ("SOWs"), entered into from time to time between Client and Novawatch pursuant to this Agreement.

"Reporting" means the collection, organization, and presentation of relevant data and information through a regular and reoccurring cadence set forth and described in the Statement of Work.

"Order" means the election of the Services purchased by Client and corresponding assumptions, the fees, the term, Client's payment details, and related information Services.

"Managed Services" means Services where Novawatch manages an aspect of Client's business from the term and scope indicated in an SOW. Managed Services may include Novawatch operating or subscribing to software on Client's behalf.

"Support Services" means Services where Novawatch's Client support services, and includes online, email, and phone support to Client throughout the term for questions related to cyber-security issues, concerns, or monitoring services.

"Services" means the services to be provided by Novawatch to Client, as set forth and described in one or more SOWs entered into from time to time between Client and Novawatch pursuant to this Agreement. Collectively, "Managed Services" and "Support Services" shall be referred to herein as the "Services".

"SOW" means a mutually agreed upon statement of work, or scope of work ordering document that sets forth and describes the Services to be provided hereunder, the applicable fees to be paid, and as applicable, any schedules, timelines, and specifications, and any other term agreed upon by the parties.

### **2. SCOPE; DOCUMENTS**

The Services to be performed by Novawatch will be implemented through one or more SOWs entered into from time to time between Client and Novawatch. The purpose of this Agreement is to set forth the general terms and conditions applicable to all such SOWs. This Agreement, in combination with each SOW, individually comprises a separate and independent contractual obligation from any other SOW. Each SOW shall be numbered consecutively and contain (or incorporate as attachments by

reference), at minimum, the following elements:

- (1) a detailed description of the Services to be performed by Novawatch for Client;
- (2) a detailed description of the Deliverables to be provided by Novawatch to Client;
- (3) the amount, schedule, and method of compensation to be paid to Novawatch by Client;
- (5) the term of the SOW, including any renewal or extension options.

Each party must approve each SOW in writing by the signature of its duly authorized representative. Once so executed, the SOW will be deemed to be incorporated into this Agreement. No work or services shall commence under an SOW until such approvals have been obtained.

### 3. License.

**License Grant.** Subject to the terms and conditions of this Agreement, Novawatch grants to Client, a nonexclusive, nontransferable, non-sub licensable use of the Services tools and services in accordance with the Documentation, solely for Client's internal business purposes. Client agrees to pay for all licenses utilized and incurred on its behalf by Novawatch.

**General Restrictions.** Client shall not use or copy the Services tools, processes, or Documentation, or any portion thereof, except as expressly authorized in this Agreement. Without limiting the generality of the foregoing, Client i) shall not sublicense, provide access to, or otherwise use the Services for the benefit of any Client or third party; ii) shall not transfer, assign, copy, modify, translate, or prepare derivative works based upon the Services; and iii) shall not reverse engineer, decompile, disassemble, or unbundle the Services. Client shall also be solely responsible for its Delegate. Client shall be responsible for the confidentiality of and shall not disclose its username(s) and password(s) to any other person. Client shall notify Novawatch upon a known unauthorized disclosure of its username(s) and password(s). Client shall also be solely responsible for maintaining the necessary equipment to conduct and use the Services.

### 4. Client Cooperation.

Client acknowledges that the timely provision of and access to its facilities and equipment; its assistance and cooperation from its personnel; and suitably configured computer products are essential to performance of any Services and that Novawatch's ability to complete any Services is dependent upon same. If the requirement(s), schedule, scope, specification(s), or related system environment(s) or architecture are changed by Client, Novawatch shall not be responsible for the change unless Client and Novawatch specifically consent to the change and additional charges, if any, in writing. The Client will supply Novawatch with all information required to perform the Services and the Client hereby warrants all information provided is true, accurate, and complete. The Client further warrants that it owns or is authorized to represent the legal owners of the computer hardware, computer software, and computer systems to be monitored and/or examined and is authorized to enter into binding legal agreements.

### 5. Fees and Payment.

**Fees.** Client shall pay Novawatch the fees and schedule listed in the Order or in the applicable SOW. The Client agrees to pay all charges for the services provided by Novawatch and for all licenses incurred and utilized by Novawatch on its behalf. For any payments due on a monthly basis and any renewal of the Services, such payments shall be invoiced in advance of the period for which the invoice is applicable to. All payments under this Agreement shall be due within thirty (30) days of the date of Novawatch' invoice for such payments. Late payment of fees payable to Novawatch shall bear interest at the rate of 1.5% per month, or the maximum amount permitted by law, if less. Client shall pay any attorneys' fees, court costs, or other costs incurred in collection of delinquent amounts. Except as expressly provided in this Agreement, fees specified in the Order or applicable SOW are non-refundable. Client shall be responsible

for paying for any software license incurred and utilized by Novawatch on Client's behalf. Training of Client's new or existing staff is subject to additional charges based on the time and effort involved. Client is responsible for any additional charges associated with any delays in Novawatch's performance under this Agreement initiated or requested by Client without any fault on the part of Novawatch.

**Scope of Services.** The scope of the engagement is based on the information provided by the Client and is contained in the Order or applicable SOW. If the environment is found to be materially different from the information disclosed in the Order or applicable SOW, the Client will be notified of the potential impact to the agreed upon services and deliverables and fees. If necessary, a change order to this Agreement will be executed prior to any additional work being performed by Novawatch.

**Taxes and other Fees.** Client shall pay any and all applicable taxes and duties imposed as a result of Client's use of the Services except for taxes based on Novawatch's income. All payments or reimbursements under this Agreement shall be made free and clear and without deduction for any and all present and future taxes, levies, imposts, duties, VAT charges, or fines imposed by any federal, state, or local government or foreign government. The amounts received by Novawatch, after the provision for any withholding required by any country or any tax specified in the foregoing sentence, will be equal to the amounts specified in the Order or applicable SOW.

## 6. Confidentiality.

**Confidentiality.** Both parties may, in connection with this Agreement, disclose to the other party Confidential Information. Confidential Information shall include, but not be limited to, information related to the Services, Documentation, past, present or future research, development or business affairs, any proprietary products, materials or methodologies, the terms of this Agreement, or any other information that provides the disclosing party with a competitive advantage. Confidential Information, if disclosed or provided in tangible form, shall be clearly and conspicuously identified as confidential or proprietary, and if orally or visually disclosed, shall be identified as confidential or proprietary in nature at the time of disclosure unless the nature of which or circumstances of disclosure of which make it reasonably apparent that it is Confidential Information of the disclosing party. The receiving party shall protect the disclosing party's Confidential Information with the same degree of care that it regularly uses to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than a reasonable degree of care. Confidential Information shall not be provided or disclosed to anyone except those employees or contractors of the receiving party with a need to know under this Agreement and who are bound to confidentiality obligations no less restrictive than the obligations contained in this agreement. Each part is responsible for any breach of this Agreement by its employees or contractors. No warranties or rights or licenses under patents, trademarks, or copyrights are granted or implied by any disclosure of Confidential Information. Confidential Information and any and all authorized copies thereof shall remain the property of the disclosing party. Notwithstanding any provision contained in this Agreement, neither party shall be required to maintain in confidence any of the following: (i) information that, at the time of disclosure to the receiving party, is in the public domain; (ii) information that, after disclosure, becomes part of the public domain without restriction, except by breach of this Agreement; (iii) information that was in the receiving party's possession at the time of disclosure, and which was not acquired, directly or indirectly, from the disclosing party; (iv) information that the receiving party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing party; (v) information that the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or (vi) information that is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production. Notwithstanding anything to the contrary, Novawatch may disclose Client as a Client in sales presentations, other press releases, product brochures, and other marketing material if agreed to by Client.

## 7. Intellectual Property Rights.

Client acknowledges that Novawatch and its licensors, retain all intellectual property rights and title (including any patent, copyright, trademark, trade secret, and other rights) in and to all of Novawatch, and their confidential information, trade secrets or other proprietary information, products, and the ideas, concepts, techniques, inventions, processes, Services, Documentation, or works of authorship developed, comprising, embodied in, or practiced in connection with the Services provided by Novawatch hereunder ("Novawatch Intellectual Property"). Novawatch Intellectual Property includes all derivatives developed or created by Novawatch or its personnel or contractors during the course of performing any Services for Client. Client does not acquire any rights, expressed or implied, in the Novawatch Intellectual Property or in any modifications, enhancements, localizations, extensions or derivative works thereto, or in any materials provided hereunder. Novawatch acknowledges that Client retains ownership of all of its Confidential Information and data provided and/or uploaded into the Services by the Client or its Delegates along with all intellectual property rights (including any patent, copyright, trademark, trade secret, and other rights) in relation to same.

## **8. Warranty; Warranty Disclaimer.**

**Warranty.** Novawatch warrants that: (i) performance of the Services called for by this Agreement does not and shall not violate any applicable law, rule, or regulation or any contracts with third parties; (ii) the materials to be prepared, produced or developed for Client do not and shall not violate any third-party rights in any U.S. patent, trademark, copyright, trade secret, or similar right; and (iii) Novawatch is the lawful owner or licensee of any software programs or other materials not provided by Client and used by Novawatch in the performance of the Services called for in this Agreement.

**Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS" AND NOVAWATCH DOES NOT MAKE ANY WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NOVAWATCH DOES NOT WARRANT THAT (I) THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR (II) THE SERVICES WILL BE ERROR FREE AND/OR OPERATE WITHOUT INTERRUPTION. CLIENT UNDERSTANDS COMPUTER, NETWORK, AND INTERNET SECURITY ARE CONTINUALLY GROWING AND CHANGING FIELDS AND THIS SECURITY SERVICE DOES NOT GUARANTEE THE CLIENT'S SYSTEMS ARE SECURE FROM EVERY FORM OF ATTACK. NO SECURITY TESTING OR MONITORING IS 100% INFALLIBLE. CLIENT UNDERSTANDS AND ACCEPTS THAT IT IS IMPOSSIBLE TO TEST THE VARIOUS SYSTEMS (HARDWARE, SOFTWARE AND NETWORK) WHICH MAY HAVE VULNERABILITIES WHICH ARE NOT KNOWN AT THE TIME OF TESTING OR FOR THE MATHEMATICAL UNIVERSE OF ALL POSSIBLE INPUTS/OUTPUTS FOR EACH SOFTWARE OR HARDWARE COMPONENT IN USE. FURTHER, SECURITY BREACHES CAN AND FREQUENTLY DO COME FROM INTERNAL SOURCES WHOSE ACTIVITY IS NOT A FUNCTION OF SYSTEM CONFIGURATION, AUDITING OR MONITORING.

## **9. Limitation on Liability; Indemnification.**

**Limitation of Liability.** IN NO EVENT SHALL NOVAWATCH BE LIABLE TO CLIENT (OR ANY OTHER THIRD PARTY) FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. EXCEPT WITH RESPECT TO ANY INDEMNIFICATION CLAIMS, NOVAWATCH'S AGGREGATE LIABILITY TO CLIENT UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CLIENT TO NOVAWATCH UNDER THE SOW GIVING RISE TO THE LIABILITY.

**Indemnification.** Each party at its own expense shall indemnify, defend, and hold the other party free and harmless from any and all claims, damages, losses, costs, actions, and expenses, including reasonable attorney's and experts' fees arising from any claim or contention (a) arising under this Agreement or (b) the breach of warranties, representations and obligations under this Agreement. Without limiting the generality of the foregoing, Novawatch, at its own expense shall indemnify, defend, and hold Client free and harmless, against any claim that the Services infringe any U.S. patent, Berne Convention copyright or misappropriates any third party's trade secret. Notwithstanding the foregoing, Novawatch shall have no obligation to indemnify Client under this Section to the extent any claim of intellectual property infringement is based upon or arising out of (i) any unauthorized modification or alteration to the Services made by Client, in the event such infringement would have been avoided but for such modification or alteration, (ii) Client's continuance of allegedly infringing activity after being notified to stop using the Services, (iii) Client's failure to use corrections or enhancements made available by Novawatch, and/or (iv) use of the Services not in accordance with the applicable Documentation or outside the scope of the license granted under this Agreement.

**Sole Remedy.** The foregoing remedies constitute Client's sole and exclusive remedies, and Novawatch's entire liability, with respect to intellectual property infringement.

## 10. Term and Termination.

**Term.** This Agreement shall commence as of the Effective Date as set forth below and shall continue for the term set forth in the applicable Order or SOW, including any renewal terms agreed to by the parties (the "Term").

**Termination.** This Agreement may be terminated by either party upon thirty (30) days prior notice for any material default or breach of any of the material terms and conditions of this Agreement by the other party, unless the defaulting party has cured such failure or default within such 30-day period; or immediately upon notice, if (i) the other party is subject to a bankruptcy proceeding, whether voluntary or involuntary, which is not dismissed within sixty (60) days or makes an assignment for the benefit of creditors, or if a receiver, liquidator, administrator, or trustee is appointed for such party's affairs is initiated and not dismissed within sixty (60) days or (ii) the other party is dissolved. If this Agreement is terminated by Novawatch due to an uncured breach by Client, Client shall immediately pay Novawatch all outstanding fees due to Novawatch under the remaining term of the Agreement and shall reimburse Novawatch for any unreimbursed costs incurred for the benefit of the Client (including, but not limited to any software licensing fees incurred for the Client's benefit). Upon any termination or non-renewal of this Agreement, the Client may request that any data logs be provided by Novawatch, for which the Client agrees to pay Novawatch at its normal hourly rate (time and materials) for extracting and providing such data (up to 12 months or equal to the term of the services provided to Client and subject to any limitation of the tool). Termination of the contract is not allowed due to any limitation of the Client to fully deploy and leverage the Services.

**Effect of Termination.** Upon termination of this Agreement for any reason, the provisions of 5, 6, 7, and 9 shall survive. Upon termination of this Agreement, Client shall immediately pay Novawatch all outstanding fees due under this Agreement and shall promptly return to Novawatch, or, at Novawatch's option, destroy, all copies, in any medium, of the Services and all Confidential Information of Novawatch. Notwithstanding anything to the contrary, Client understands and acknowledges that this Agreement is for a specific term set forth in the SOW and there are limited termination rights. If the Client has (i) defaulted under the Agreement by failing to make the monthly payments due under this Agreement or any applicable SOW between the Novawatch and the Client, or (ii) or breached this Agreement by attempting to terminate this Agreement without cause, the Client shall immediately pay the Novawatch as liquidated damages for such default or breach an amount equal the remaining monthly fees owed to the Novawatch for the number of months remaining in the Term (or any renewal term, as applicable) as of the effective date of such default or breach by Client, as well as reimburse Novawatch for any costs incurred for the benefit of the Client including, but not limited to any software licensing fees incurred for the Client's

benefit (the "Liquidated Damages"). In the event that the Client is, in part or in whole, liquidated, dissolved, merged into a third party, acquired by a third party, or involved in any other transaction that materially reduces the assets and/or accounts serviced by the Novawatch pursuant to this Agreement, the liquidated damages provision set forth above will apply, and will be adjusted rateably if any of the events described above is partial. Any liquidated damages amount payable to the Novawatch will be payable on or before the date of the event that triggers the payment obligation. Inasmuch as a breach or default by the Client will cause substantial damages to the Novawatch and because of the difficulty of estimating the damages that will result, the Parties agree that the Liquidated Damages is a reasonable forecast of probable actual loss to the Novawatch and that this sum is agreed to as liquidated damages and not as a penalty. Client agrees that it shall be liable for all attorneys' fees and costs incurred by Novawatch in connection with enforcement of this liquidated damages provision.

## 11. General Provisions.

**Notices.** Unless otherwise provided in this Agreement, all notices under this Agreement shall be in writing and notices from Novawatch shall be sent by email to the e-mail address on file with Novawatch and notices sent by Client shall be sent by email to the email address on file with Client or express delivery service to Novawatch, addressed to the address specified on the first page of this Agreement. Notices shall be effective on the date of delivery in the case of delivery by email or on the date the notice is delivered to the applicable address in the case of delivery by express overnight service.

**Force Majeure.** Novawatch will not be deemed to have materially breached this Agreement to the extent that performance of its obligations (except payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, act of government, shortage of materials or supplies, strike, labor dispute or walkout, or any other cause beyond the reasonable control of a party; provided that the party whose performance is delayed or prevented resumes performance of its obligations as soon as practicable.

**No Assignment.** Neither party shall assign, transfer, or pledge this Agreement, or any interest or rights of any kind herein, without the prior written consent of the other party, except in connection with a merger, reorganization, or sale of all or substantially all of the business or equity interest of the assigning party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

**Independent Contractors.** In performing this Agreement, each of the parties will operate as, and have the status of, an independent contractor. This Agreement does not create any agency, employment, partnership, joint venture, franchise, or other similar or special relationship between the parties. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties, or commitments on behalf of the other party or its affiliates, whether expressed or implied, or to bind the other party or its affiliates in any respect whatsoever.

**Government Use.** Portions of the Services are deemed to be "commercial computer software" and/or "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, duplication, modification, or disclosure by the United States Government is subject to the restrictions set forth in these clauses and shall be governed by this Agreement to the maximum extent permitted by law.

**Choice of Law; Choice of Forum.** EACH PARTY EXPRESSLY WAIVES THEIR RIGHT TO A TRIAL BY JURY. Any disputes under this Agreement or any SOW shall be resolved exclusively by final and binding arbitration administered by the American Arbitration Association ("AAA") and conducted before a single arbitrator pursuant to the applicable Rules and Procedures established by AAA ("Rules and Procedures"). You agree further that the arbitration shall be held in Phoenix, Arizona, and that the arbitrator shall apply Arizona law consistent with the Federal Arbitration Act and applicable statutes of limitations and shall honor claims of privilege recognized at law.

**Injunctive Relief.** Client acknowledges and agrees that any breach of this Agreement relating to Novawatch's intellectual property rights in the Services would cause irreparable harm to Novawatch for which recovery of money damages would be inadequate. Therefore, in addition to any and all remedies available to Novawatch at law or in equity, Novawatch shall be entitled to obtain injunctive relief to protect its intellectual property rights hereunder. Novawatch acknowledges and agrees that any breach of this Agreement relating to Client's intellectual property rights would cause irreparable harm to Client for which recovery of money damages would be inadequate. Therefore, in addition to any and all remedies available to Client at law or in equity, Client shall be entitled to obtain injunctive relief to protect its intellectual property rights hereunder.

**Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired thereby.

**Entire Agreement.** This Agreement, all Orders, Statements of Work, and any documents referenced herein constitute the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous, written or oral, negotiations, correspondence, understandings, and agreements between the parties respecting the subject matter of this Agreement. Any additional terms in any Client purchase order or other ordering document are expressly rejected by Novawatch.