



200 Prospect Street, Waltham, MA 02454-9141 U.S.A.
Tel: 1-800-545-6682 | Fax: 781-894-0585 | www.novabiomedical.com

09/07/22

SERVICE AGREEMENT

PO #: _____

Connie Lewis
Tarrant County Medical Examiner
200 Feliks Gwozdz Place
Fort Worth, TX 76104

Bill To: _____

Instrument: pHox Ultra
Serial #: Z11C200010C
Current Agreement Expires: 11/1/2022

We wish to thank you for allowing us to service your NOVA instrument during the last year. Your service agreement is expiring. You will find our current offering listed below. To purchase a new contract for the upcoming period, please sign below and provide your Purchase Order Number as well as a hardcopy of the Purchase Order. Return it to the attention of the Nova Service Agreement Coordinator.

If you require an executed copy of this document, please initial the appropriate block and a copy will be returned to you. If in the event you do not plan to purchase, please initial the appropriate block, and return to the Service Agreement Coordinator, please include your reason.

Please send me an executed copy:

☐

I do not wish to purchase:

☐

Reason _____

Emerald Comprehensive Service Agreement

- Unlimited Emergency Service Calls
- All Mechanical and Electronic Parts
- Four Preventive Maintenance Call with In-Service Training/Product Improvement
- Software Updates
- Availability is limited to customers located within 100 miles of the local Nova Biomedical Service Engineer**

** For customers outside 100 miles of the local Field Service Engineer, contact Nova Biomedical for details.

This Service Agreement covers the period 11/2/2022 through 11/1/2023.

S/A Amount: \$8,249.00
Tax: \$ _____ (Customer should add applicable state tax)
Total: \$ _____

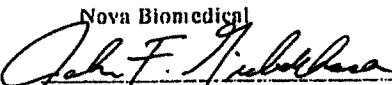
Customer

By: _____

Name: _____

Title: _____

Date: _____

Nova Biomedical
By: 

Name: John Giebelhausen

Title: Sr. Director, National Field Support

Date: 10/5/2022

THE TERMS AND CONDITIONS ON THE REVERSE SIDE ARE PART OF THIS AGREEMENT. The Customer acknowledges that he has the Agreement, understands it, and agrees to be bound by its terms and conditions. Further, the Customer agrees that it is the complete and exclusive statement of the Agreement between the parties which supersedes all prior agreements, oral or written, and all other communications between parties relating to the subject matter of this agreement. YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND THE CUSTOMER AND YOUR SIGNATURE AUTHORIZES NOVA TO FURNISH SERVICE ON THE EQUIPMENT.

MAINTENANCE SERVICES AGREEMENT TERMS AND CONDITIONS

1. Service. Nova Biomedical Corporation ("NOVA") agrees to provide you with on-site repair service, scheduled maintenance, and replacement parts (excluding consumables) as are necessary to maintain the Instruments and Equipment in proper operating condition (the "Services"). Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of NOVA. The exact levels of Services to be provided are indicated under Sections II and III above and further explained in Sections 2 and 4 below. You acknowledge that the Services provided under this Agreement do not assure uninterrupted operation of the Equipment.
 2. Coverage. Services will be rendered under this Agreement only during NOVA's normal working hours, 9 A.M. to 5 P.M., Monday through Friday, for 12 months, excluding observed NOVA holidays, at the Instrument Location designated on the foregoing page, and may include the coverage items listed on the first page, such as (a) replacement of any necessary electronic parts, (b) replacement of any necessary mechanical parts, (c) emergency service calls, and/or (d) periodic preventive maintenance inspections as specified in Section II above during which Equipment will be cleaned, lubricated, checked for worn parts, and adjusted to NOVA specifications. Please note that the Emerald Comprehensive and Gold Comprehensive service plans require an initial attempt to diagnose and resolve any malfunction via NOVA's toll-free number. On-site service visits will not be scheduled until you have made a reasonable attempt to troubleshoot with a NOVA technical services representative over the phone. To the extent that parts may be reasonably replaced by you, NOVA will ship those parts to the Instrument Location by the fastest means. If, after that, the Equipment still cannot be returned to good working order, NOVA will promptly send a qualified service representative to the Instrument Location. In any event, it will be the sole decision of NOVA to schedule on-site corrective service. A valid purchase order will be required to initiate any on-site service to perform maintenance and/or troubleshooting which, in the sole and exclusive opinion of NOVA, is considered to be operational and not the result of an Instrument malfunction.
 3. Acceptance. All Equipment to be placed under this Agreement shall be certified by an authorized NOVA representative to be in operating condition and not in need of overhaul or immediate repair prior to acceptance of this Agreement by NOVA. This Agreement will not be binding on either party unless and until signed and accepted by NOVA, whereupon it shall become binding on both you and NOVA. Acceptance of this Agreement by NOVA is contingent upon the absence of any mathematical error and upon consistency with NOVA's then current prices.
 4. Exclusions. The Services rendered under this Agreement shall exclude any of the following items ("Additional Work"): (a) service or parts required for repair due to damage caused by accident, neglect, misuse, altering the Equipment, unfavorable environmental conditions, electric current fluctuations, work performed by any party other than a qualified service representative of NOVA, or any force of nature; (b) work, which in the sole and exclusive opinion of NOVA, is impractical to perform because of location of the Instrument, alterations to the Equipment, or connection of the Equipment to any other device; (c) specification changes; (d) service required to parts in the system contacted or otherwise affected by consumables or reagents not manufactured by NOVA which cause shortened life, erratic behavior, damage, or poor analytical performance; (e) service required because of problems which in the sole and exclusive opinion of NOVA have been caused by any third party; or (f) Instrument refurbishing for cosmetic purposes. In any such event, an estimate of the service and material costs involved will be submitted to you for approval prior to performance of the Additional Work. Service, parts, and labor for any Additional Work or for any other work not specifically included under this Agreement shall be rendered at NOVA's then current time and materials rates and terms. For BioProfile customers only - Any activity involving an Installation Qualification/Operational Qualification (IQ/OQ), is excluded from this Service Agreement.
 5. Service Location. On-site Services rendered under this Agreement will be performed at the Instrument Location indicated above, unless in the sole and exclusive opinion of NOVA, the repair work must be performed at one of its own service locations. You hereby grant permission to NOVA to enter upon your premises during normal business hours to render the Services, and you hereby agree to provide NOVA's qualified service representative full and free access to the Equipment. NOVA shall not be responsible for failure to render Services occasioned by any circumstances beyond its reasonable control. If applicable, NOVA reserves the right to charge any vendor credentialing fees back to you.
 6. Terms and Invoicing. A Service Agreement ("Service Agreement") will be sent to you approximately sixty (60) days prior to the anniversary date of this Agreement. If you desire the services from Nova, an authorized signatory must sign and return the Service Agreement along with a hard copy of the purchase order to NOVA. Under NO circumstances will your termination of this Agreement result in a refund or credit to you in the event termination occurs prior to an anniversary date. Invoices for Services to be rendered hereunder will be delivered to you upon the fully executed Service Agreement. The rate for the Equipment covered hereunder shall be based upon the then established NOVA price schedule. Payment terms are Net 30 Days.
 7. Changes in FDA Regulations. You are solely responsible for complying with all requirements of the United States Food and Drug Administration ("FDA") relating to your operation and use of the Equipment. In the event FDA requirements relating to use of the Equipment are amended during the period that this Agreement is in effect in such a manner as to require modification of the Services rendered thereafter, you shall notify NOVA in writing of such amendments and this Agreement and the rates charges hereunder shall be modified by NOVA to provide the Services in compliance with such amended regulations; provided however, that in the event NOVA, in its sole discretion, determines that it is impracticable, financially or otherwise, to modify the Services to comply with such amendments, then NOVA at its option, may terminate this Agreement upon (Ninety (90) day's advance written notice to you.
 8. Limitation of Liability. The sole obligation of NOVA under this Agreement is to inspect and make necessary repairs of the Equipment, and you hereby agree that there are no warranties, express or implied, which would impose upon NOVA any other obligations or liability. NOVA's liability to you for damages, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to actual damages, up to a maximum of the original cost, less physical depreciation of Equipment affected thereby and covered under this Agreement, and that is the subject matter of or is directly related to the cause of action. The foregoing limitation of liability shall not apply to claims for personal injury or damage to real property or other tangible personal property caused by NOVA's negligence. EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF THE PARTS OR SERVICES FURNISHED UNDER THIS AGREEMENT. NOVA DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL NOVA BE LIABLE FOR ANY CLAIM FOR LOST PROFITS, INCIDENTAL, INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES EVEN IF NOVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST YOU BY ANY OTHER PARTY.
 9. Claims. Within ten (10) days after you become aware of any claim under this Agreement against NOVA, you shall be obligated to notify NOVA Headquarters, 200 Prospect Street, Waltham, Massachusetts 02454-9141. After CFO. In no event shall NOVA be liable to you for any damage or injury to person or property caused by or resulting from the negligence of you, your agents, or your employees.
 10. Modifications to Agreement. Except for Sections I through V above, NOVA may modify the terms and conditions of this Agreement at any time. Any such modification will apply on that date specified in the Agreement or otherwise notify NOVA at least thirty (30) days in advance of such date of your intention to terminate the Services under this Agreement. Sections I through V of this Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of you and of NOVA. Any variance from the terms and conditions of this Agreement in any order or other written modification will be of no effect.
 11. Customer Representation. You represent that you are the owner of the Equipment covered under this Agreement, or if not the owner, you have authority from the owner to include the Equipment covered under this Agreement.
 12. No Right to Assign. This Agreement is not assignable by you; your rights, duties, and obligations may not be assigned or transferred by you without prior written consent of NOVA. Any attempt to assign or transfer any of your rights, duties, or obligations under the Agreement without such consent is void.
 13. General. NOVA shall not be responsible for failure to render the Services if such failure is due, directly or indirectly, to strikes, fire, flood, or other Acts of God, acts of civil or military authority, accidents, claim of patent infringement or action thereon that may inhibit NOVA's ability to render the Services, shortages of suitable parts, materials, or labor, or any other causes beyond its control. This Service Agreement constitutes the entire agreement between you and Nova with respect to services provided herein. Representations or statements not expressed herein, and terms and conditions of any other document (including, without limitation, a Purchase Order) submitted by you, shall be of no force and effect and considered void. Any Purchase Orders, or similar payment Instruments, issued after this Agreement is signed do not amend or supplement the terms of this Agreement. Such Purchase Orders are considered by Nova to serve as a payment mechanism only and no future set by Nova, including providing services described in such a Purchase Order, shall be considered acceptance of any terms and conditions included in such a purchase order. This Agreement shall only be amended or supplemented with Nova's express and specific written agreement.
- No action, regardless of form, arising out of this Agreement may be brought by either you or NOVA more than two years after the cause of action has arisen, or, in case of nonpayment, more than two years from the date of the last payment. All maintenance and other service activities performed in connection with the Equipment covered under this Agreement, which may be made available by NOVA to you at no additional charge or at NOVA's then applicable time and material charges, shall be subject to the terms and conditions of this Agreement unless such activities are provided under another written agreement signed by you and NOVA.
- Service packages for Instruments which are 6-9 years beyond the date of manufacturing will be priced at a 15% premium over the standard service contract price. Service packages for Instruments which are 10 or more years beyond the date of manufacturing will be billed at a 20% premium over the standard service contract price. Service packages for Instruments which are 15 years or older beyond the date of manufacturing will be billed at a 25% premium over the standard service contract price.

SPECIAL CONDITIONS

For a period of six (6) years from the date of original sale, if you are the original purchaser, NOVA agrees to maintain the Equipment covered hereunder; provided that within one (1) year of the original date of sale the Equipment is placed under this Agreement and this Agreement is continued in full force and effect without lapse. In the event the Equipment covered hereunder does not come within the provisions of the immediately preceding sentence, NOVA shall not be obligated to accept any Equipment for service until such time as the Equipment is placed in condition acceptable to NOVA. No Equipment in service for three (3) or more years will be accepted under a Service Agreement without a complete inspection by an authorized NOVA service representative. In such event, an estimate of costs involved with factory certification of the Instrument will be submitted to you for review prior to the performance of any services.

Nova Biomedical 10132022

APPROVED AS TO FORM:

CERTIFICATION OF
AVAILABLE FUNDS: \$ _____

Kimberly C. Wesley
Criminal District Attorney's Office*

Tarrant County Auditor

*By law, the Criminal District Attorney's Office may only approve contracts for its clients. We reviewed this document as to form from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.