



## **Master Service Agreement**

This Master Services Agreement (the "Agreement") between Noviant Inc. (Noviant) located at Suite 401, 32 Broadway, New York, New York 10004 the customer entity ("Customer") specified in the Transaction Document and is effective on the date set forth in the referencing Transaction Document ("Effective Date") and specifies the terms and conditions agreed between the parties when Noviant provides information technology related products, equipment, or consulting services to Customer.

### **1. Overview.**

This Agreement states the terms and conditions by which Noviant will deliver and Customer will receive any or all the services and/or products provided by Noviant. This Agreement is intended to cover all products, equipment and/or services ordered by Customer and provided by Noviant.

### **2. Delivery of Services; Terms; Fees.**

#### **2.1 Delivery of Services.**

By submitting a Transaction Document, Customer agrees to take and pay for the service(s) and/or products/equipment so ordered during the Term and for any Renewal Term of this Agreement.

#### **2.2 Term.**

(a) Term Commencement. The term of the Agreement shall be for the agreed upon term in Transaction Document from the Effective Date of signing by both parties.

(b) Renewal Term(s). Upon expiration of the initial term of this Agreement, the term shall be extended automatically for a period equal to 12 months ("Renewal Term"), unless and until either party gives the other no less than thirty (30) days' written notice of a termination before

term expiration. The termination of this Agreement will not affect Customer's obligations to pay for any service(s) and/or products/ equipment delivered before termination.

### **3. Fees and Payment Terms.**

#### **3.1 Fees and Expenses.**

Customer will pay all fees due according to the prices and terms negotiated between the parties and listed in the Purchase Order(s).

#### **3.2 Payment Terms.**

Customer will be billed (the "Initial Bill") an amount equal to (i) all non-recurring charges indicated in the Purchase Order(s) and the monthly recurring charges the "Recurring Bill") for the first month of services and each month thereafter. Payment for all fees is due upon receipt of each Noviant invoice. All payments will be made in U.S. Dollars. Notwithstanding anything to the contrary in this Agreement, Noviant expressly reserves the right to alter, change or amend its billing practices at its sole discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

#### **3.3 Late payments.**

Any payment not received within fifteen (15) days of the invoice date of the Initial Bill and thirty (30) days of the invoice date of a Recurring Bill (respectively, a "Payment Default") will accrue interest at a rate of one and one-half percent (1-1/2%) per month. Customer also shall pay to Noviant all expenses incurred by Noviant in exercising any of its rights under this Agreement with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable attorneys' fees and the fees of any collection agency retained by Noviant.

#### **3.4 Taxes.**

Customer will be responsible for and will pay in full all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of services and/or products/equipment.

### **4. Intellectual Property Ownership.**

This Agreement does not transfer from Noviant to Customer any Noviant Technology, and all right, title and interest in and to Noviant Technology will remain solely with Noviant. This Agreement does not transfer from Customer to Noviant any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer.

### **5. Limited Warranties.**

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. EXCEPT AS PROVIDED IN THE PURCHASE ORDERS, NOVIANT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL

OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NOVIANT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

**5.1 Disclaimer of Actions Caused by and/or Under the Control of Third Parties.**

NOVIANT DOES NOT AND CANNOT CONTROL THE FLOW OF INFORMATION TO OR FROM NOVIANT'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). NOVIANT CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY NOVIANT DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

**6. Customer Obligations.**

**6.1 Warranties of Customer.**

(a) General. Customer represents that Customer possesses the legal right and ability to enter into this Agreement, and the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other Noviant customers' use of Noviant services.

(b) Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Noviant will have the right, in its sole discretion, to suspend or terminate immediately any Services.

**6.2 Compliance with Law and Rules and Regulations.**

Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations.

**6.3 Third Party Rights.**

Customer shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product or that appear during use of any Third Party Product; or (ii) reverse engineer, decompile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

## **7. Limitations of Liability.**

### **7.1 Delays and Interruptions.**

NOVIANT SHALL NOT BE LIABLE FOR ANY LOSS OF DATA RESULTING FROM DELAYS, CORRUPTION OF DATA, NON-DELIVERIES, MIS-DELIVERIES OR SERVICE INTERRUPTIONS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND NOVIANT SHALL HAVE NO LIABILITY THEREFORE. EXCEPT TO THE EXTENT OF NOVIANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER NOVIANT NOR ITS NETWORK SERVICES SUPPLIER WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO NOVIANT'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF NOVIANT'S OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

### **7.2 Consequential Damages.**

EXCEPT FOR THE PARTIES' INDEMNITY OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE.

7.3 Notwithstanding anything else to the contrary contained in this Agreement, Noviant's maximum aggregate liability to Customer for any claim related to, or in connection with, this Agreement, whether in contract, tort or otherwise, shall be limited to the total amount of fees actually paid by Customer to Noviant.

7.4 Noviant may provide Customer access to other third party software and/or services ("Third Party Products") through reseller relationships Noviant has established with certain commercial vendors, including without limitation, Microsoft Corporation ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by Noviant and not by the Third Party Vendor. Neither Noviant nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM NOVIANT OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES,

ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER NOVIANT NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND NOVIANT WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

## **8. Indemnification.**

Each party agrees to indemnify and hold the other harmless against any losses, costs, expenses (including, but not limited to, reasonable attorneys' fees), claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against the other or its affiliates related to or arising out of (i) any infringement or misappropriation or alleged infringement or misappropriation of any United States copyright, trade secret, patent, trademark, or other proprietary right related to any hardware or software utilized in connection with any of the Services (but excluding any infringement contributory caused by the other party). Customer further agrees to indemnify Noviant and its affiliates against any Losses which arise out of, or relate to any content provided by Customer or the customers/clients of Customer, and Customer will reimburse Noviant and its affiliates for all legal expenses, including reasonable attorneys' fees, incurred by Noviant and its affiliates in connection with any such Losses.

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## **9. Termination.**

### **9.1 Termination Without Cause During Renewal Term.**

This Agreement may be terminated by either party at any time during any Renewal Term for any or no reason upon either party giving to the other no less than thirty (30) days' prior written notice of termination. No matter which party terminates the Agreement pursuant to this Section 9.1, any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due, and Customer shall be required to prepay for any portion of the Services that have not been paid for and are to be rendered during such thirty (30) day period.

### **9.2 Termination For Cause.**

In addition to any other rights it may have under this Agreement or applicable law, Noviant may immediately terminate this Agreement or suspend service, effective without notice, in the event of (i) a Payment Default, or (ii) Customer's breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to comply with any of the terms of the Rules and Regulations or other policies of Noviant. Customer may terminate this

Agreement if Noviant breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of same. If this Agreement is terminated by Noviant under this Section 9.2, all remaining monthly recurring and other charges specified on the applicable Purchase Order(s) for the balance of the then current term shall immediately become due and payable. In addition to the foregoing, Noviant reserves the right to prohibit any conduct or to remove any materials which Noviant believes in its sole discretion to be illegal or potentially harmful to others or may expose Noviant to harm or liability.

#### **10. Use of Customer's Name for Marketing and Promotion.**

Customer agrees that during the term of this Agreement Noviant may publicly refer to Customer, orally and in writing, as a Customer of Noviant in resumes, client lists and in other promotional materials and communications, including, but not limited to, press releases, brochures, reports,

#### **11. Entire Agreement & Jurisdiction**

Authorized representatives of Customer and Noviant have read the foregoing and all documents incorporated therein and, by executing the Purchase Order(s), agree and accept such terms effective as of the date indicated below the Customer signature.

This Agreement constitutes the entire agreement between Noviant and Customer. This Agreement supersedes any agreement (if any) either orally or in writing between the Parties. This Agreement cannot be modified in any way unless in writing and agreed to by the Parties.

This Agreement will be governed by the laws of the State of New York.

