



Master Subscription Services Agreement

This Master Subscription Services Agreement is between Novo Solutions, Inc., a Virginia corporation (**Novo**), and the entity or individual agreeing to these terms (**Customer**). It starts on the sign up date.

- 1) **WEB-BASED SOFTWARE AS A SERVICE.** This agreement provides Customer access to a proprietary web-based software service as specified on the order and as further outlined at: www.novosolutions.com.

Novo will provide this functionality through a URL (to be provided by Novo) within a hosted server environment under the terms below (**Service**). This agreement contemplates one or more orders for the Services, which orders are governed by the terms of this agreement.

2) **USE OF SERVICES.**

a). **Novo Responsibilities.** Novo must (i) use commercially reasonable efforts to make the Services available, and (ii) provide customer support for the Services under the terms of Novo Solutions Standard Service Level Agreement (described in a separate document) and is incorporated into this agreement for all purposes.

b). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Data and all activity in its account in the Service, (ii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Novo promptly of any such unauthorized access, and (iii) may use the Services only in accordance with the online documentation within the Service and applicable law.

c). **Restrictions:** Customer *may not* (i) sell, resell, rent or lease the Services, (ii) use the Services to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iii) interfere with or disrupt the integrity or performance of the Services, (iv) attempt to gain unauthorized access to the Services or their related systems or networks, or (v) share login user names.

- 3) **PAYMENT TERMS.** Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, VAT and other similar taxes.

4) **SERVICE LEVEL AGREEMENT/WARRANTY and REMEDY.**

A). **Services Availability Warranty.** Novo warrants to Customer, (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of uptime of 99.8% (*excluding* scheduled outages, force majeure, and outages that result from any Customer technology issues), (ii) the functionality or features of the Services may change but will not materially decrease during a paid term, and (iii) that the CSP may change but will not materially degrade during any paid term.

B). **LIMITED REMEDY AND DISCLAIMER.** CUSTOMER'S EXCLUSIVE REMEDY AND NOVO'S SOLE OBLIGATION FOR BREACH of the warranty in Section A above will be to provide a partial month credit in the amount of 3% of monthly fee for each hour of an outage below the minimum uptime; provided that Customer notifies Novo of such breach within 30 days of the end of that month.

NOVO DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES MAY BE INTERRUPTED OR CONTAIN AN ERROR. NOVO DOES NOT GUARANTY THAT THE SERVICE CANNOT BE HACKED.

5) **MUTUAL CONFIDENTIALITY.**

a). **Definition of Confidential Information.** Confidential Information means all confidential information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Novo's Confidential Information includes without limitation the Services, and Licensed Software and Documentation, and each of their parts and pricing (including without limitation the Service user interface design and layout), and Customer's Confidential Information includes without limitation the Customer Data.

b). **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.



- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information.
- d). **Disclosure Required by Law.** The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6) PROPRIETARY RIGHTS.

- a). **Reservation of Rights by Novo.** The software, workflow processes, user interface, designs, know-how, Licensed Software and Documentation (defined below), and other technologies provided by Novo as part of the Services are the proprietary property of Novo and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Novo. Novo reserves all rights unless expressly granted in this agreement.
- b). **Customer Restrictions.** Customer *may not*:
 - i. Reverse engineer the Services or the Licensed Software and Documentation;
 - ii. Remove or modify any proprietary marking or restrictive legends in the Service or Licensed Software and Documentation; or
 - iii. Access the Service or use the Licensed Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **Customer Owned Data.** All data uploaded by Customer remains the sole property of Customer, as between Novo and Customer (Customer Data), subject to the other terms of this agreement. During the term of this agreement, Customer may export data using the built-in export functions in the Service. Bulk exports of all data and uploaded files are available for a \$300 fee.
- d). **Licensed Software and Documentation.** All software provided by Novo as part of the Service, and the Services documentation, sample data, marketing materials, training material and other material provided through the Services or by Novo (**Licensed Software and Documentation**) are licensed to Customer as follows: Novo grants Customer a non-exclusive, license during the Term, to such Licensed Software and Documentation, for use solely with the Services.
- e). **API Access.** If available in purchased edition, Novo grants Customer a non-exclusive terminable license to interact with the Novo application-programming interface (**API**) only in conjunction with its use of the Service. Customer may not reverse engineer the API, or excessively use or access the API. The API is provided on an AS IS and AS AVAILABLE basis. Novo may temporarily suspend the API without notice, and change or terminate Customer's API license upon at least 30 days advance notice to the email address in Customer's account. Novo is not liable for any cost, loss or damage sustained by Customer as a result of any suspension, change or termination of API license.

7) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

- a). **EXCLUSION OF CERTAIN DAMAGES.** NOVO IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICES).
- b). **LIMITATION OF LIABILITY.** EXCEPT FOR NOVO'S INDEMNITY OBLIGATIONS, NOVO'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

8) TERM, TERMINATION, AND RETURN OF DATA.

- a). **Term.** This agreement continues for the duration specified on the order and auto-renews for the duration as specified in the original order, unless cancelled by either party upon at least 60 days notice prior to the renewal date (**Term**).
- b). **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
 - i. **Actions upon Termination.**



(w) Upon any termination as provided in 8(b) above by Customer, Novo must refund any prepaid and unused fees covering the remainder of the Term.

(x) Upon any termination as provided in 8(b) above by Novo, Customer must pay any unpaid fees covering the remainder of the Term. The Services will also be terminated.

c). **Return of Customer Data.**

- i. *Before termination*, Customer must export any data they wish to keep from the Service. Upon request Novo will supply the Core Data in bulk format for the fees specified in Section 6(c).
- ii. *After termination*, Novo has no obligation to maintain the Customer Data and may destroy it.

9) **GOVERNING LAW AND FORUM.**

- a). **For Customers Located In the United States.** This agreement is governed by the laws of the Commonwealth of Virginia, without regard to conflict of law principles. Any dispute arising out of or related to this agreement may only be brought in the state and federal courts for Virginia Beach, VA. Both parties consent to the personal jurisdiction of such courts and waive any claim that it is an inconvenient forum.
- b). **For Customer Located Outside of the United States.** This agreement is governed by the laws of the State of New York, without regard to conflict of laws principles. Any dispute between Customer and Novo arising out of or related to this agreement must be determined by binding arbitration in New York City, NY (in English) under the then current commercial or international rules (as applicable) of the American Arbitration Association.
- c). **No Restriction on Injunctions, and Attorneys Fees.** Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.

10) **INDEMNITY.**

- a). **By Novo For Infringement.** If a third-party claims that Customer's use of the Services (other than related to the Customer Data) infringes that party's patent, copyright or other proprietary right, Novo will defend Customer against that claim at Novo's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Novo, provided that Customer:
 - i. promptly notifies Novo in writing of the claim; and
 - ii. allows Novo to control, and cooperates with Novo in, the defense and any related settlement.

If such a claim is made, Novo could continue to enable Customer to use the Services or to modify it. If Novo determines that these alternatives are not reasonably available, Novo may terminate the Services (without any liability to Customer) upon notice to Customer and with the return of any prepaid and unused fees.

- b). **By Customer.** If a third-party claims against Novo that any part of the Customer Data infringes or violates that party's patent, copyright or other right, or any end user/customer of Customer makes any type of claim against Novo relating to their use of the Service, Customer will defend Novo against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Novo:
 - i. promptly notifies Customer in writing of the claim; and
 - ii. allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

11) **MISCELLANEOUS OTHER TERMS.**

- a). **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b). **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this agreement is effective unless both parties sign it.



- c). **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- d). **Independent Contractors.** The parties are independent contractors with respect to each other.
- e). **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- f). **No Additional Terms.** Novo rejects additional or conflicting terms of any Customer form-purchasing document.
- g). **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h). **Survival of Terms.** Any terms that by their nature survive termination or expiration of this agreement, will survive.
- i). **CISG Not Apply.** The Convention on Contracts for the International Sale of Goods does not apply.