

NOVERANT ONLINE SERVICE AGREEMENT

This Agreement ("Agreement") is made as of the EFFECTIVE DATE by and between City of Clearwater ("CLIENT"), a Florida Municipality, and Noverant, Inc. ("Noverant"), a North Carolina corporation, where EFFECTIVE DATE and CLIENT are defined herein.

RECITALS

1. CLIENT wishes to have performed for it various services, and Noverant is in the business of performing such services.
2. CLIENT wishes to engage Noverant to perform such services, and Noverant wishes to perform such services for CLIENT.
3. CLIENT selected Noverant pursuant to RFP #32-23, which is incorporated by reference.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained in this Agreement, CLIENT and Noverant agree as follows:

1. SCOPE OF SERVICES.

(a) During the term of this Agreement, Noverant shall perform for CLIENT various services in its usual line of business, including, without limitation, those services set forth in Exhibit A ("the Services").

(b) Unless otherwise agreed, Noverant shall provide all necessary labor, material, and other services to effect the Services in full conformance with Exhibit A.

(c) In providing the Services, Noverant shall comply with any work schedule set forth in Exhibit A.

2. NOVERANT'S RESPONSIBILITIES.

(a) Noverant shall comply with all applicable laws, rules, and regulations and in accordance with industry best-practices applicable to the business in which the Services are performed.

(b) Noverant represents and warrants that any products and services provided to CLIENT hereunder as part of the Services shall not infringe any rights of any third party.

(c) CLIENT shall pay all taxes, if any, imposed upon or assessed it with respect to the Services.

3. PRICE AND PAYMENT.

(a) Unless otherwise agreed by authorized CLIENT representatives, the price for the Services shall be as set forth in Exhibit A. Such price shall include all work to be performed by Noverant to perform the Services, and except as expressly set forth herein, no additional compensation shall be due Noverant for the Services. This amount shall be paid according to the payment schedule set forth in Exhibit A.

(b) CLIENT may, at any time, by written order make changes within the general scope of this Agreement including, without limitation, requiring additional services or directing the omission of or variation in the Services, to the extent they are defined in Exhibit A. Any such additional services shall be deemed Services and shall be governed by the terms of this

Agreement. If any such change causes an increase or decrease in the cost of or time required for the performance of the Services, an equitable and mutually agreeable adjustment shall be made to the price.

(c) If at any time Noverant believes that services beyond those summarized in Exhibit A are necessary to perform the Services, Noverant shall contact CLIENT, provide CLIENT with an itemized estimate of such services and additional anticipated costs, and obtain CLIENT's written permission before providing any such services and incurring any additional costs. Any such cost not approved in advance in writing by CLIENT shall be borne solely by Noverant.

(d) Expenses which are incurred specifically in connection with the performance of the Services which are not itemized in Exhibit A, including without limitation applicable costs and expenses related to travel and lodging, shall be billed to CLIENT, provided that such costs and expenses are detailed in advance and pre-approved in writing by CLIENT prior to the start of any project work.

(e) If CLIENT disputes any invoice rendered, CLIENT will notify Noverant of its objections in writing within ten (10) calendar days from the date of receipt of the invoice, and the parties will use their best endeavors to resolve such disputes expeditiously. Any undisputed portion of a disputed invoice will be paid without delay and in accordance with the payment schedule set forth in Exhibit A.

4. TERM AND TERMINATION.

(a) Unless otherwise agreed, the term of this Agreement shall be as set forth in Exhibit A.

(b) Either party may terminate, without any cancellation charge, this Agreement or a related Statement of Work (SOW) as follows: (i) immediately where any license or confidentiality restrictions, intellectual property rights or, data protection provisions, or payment obligations are breached by the other party, or in the case of insolvency of the other party, or (ii) upon thirty (30) days' written notice to the other party in the event of a material breach of any SOW (except in the case of force majeure) by the other party that has not been cured within such thirty (30) day period. Any breach of any provision of the Agreement shall be deemed to be a breach of the relevant SOW. Any Services and CLIENT's license to Noverant's materials shall immediately terminate in the event of any termination by Noverant pursuant to (i) or (ii) above. Without prejudice to any rights or remedies available to Noverant, in the event of any permitted termination of any SOW, CLIENT shall pay Noverant, at a minimum, for the Services performed through the effective date of termination

(c) CLIENT may terminate this Agreement or any associated Statement of Work in accordance with terms defined in Exhibit A. In the event of such termination without cause, Noverant shall be paid in full for all non-refundable fees and expenses as outlined in the Agreement or the Statement of Work which are due until the date of termination.

(d) Unless otherwise agreed, the Term is 12 months with automatic 12-month renewal unless terminated w/90 days prior notice.

(e) CLIENT rights and access to its data is governed by the most recent version of *Noverant Client Rights Regarding Data Ownership and Access*, incorporated herein by reference.

5. CONFIDENTIALITY AND PRIVACY.

Any requirement in this Agreement for a party to act reasonably, use reasonable efforts, or any variations thereof, will mean that the party must use all reasonable commercial efforts having regard to the surrounding circumstances, unless expressly provided otherwise or prohibited by governing law.

Unless agreed upon in writing under a separate confidentiality and privacy agreement,

a) Noverant and CLIENT shall keep strictly confidential all proprietary, technical, business, marketing, sales, and other

information disclosed by each other in accordance with reasonable industry best practices.

- b) Noverant's use of any information considered to be private or personal under local law shall be restricted for the purpose of providing the Services.
- c) Noverant will protect such information in accordance with applicable privacy laws and will not disclose such protected information without the prior written consent of CLIENT
- d) CLIENT data including production, backup and disaster recovery data will be stored in CLIENT's base country and encrypted using industry-standard techniques in-transit and at rest.

6. **INDEMNIFICATION AND LIMITATION OF LIABILITY.**

- (a) Noverant agrees to indemnify, defend, and hold CLIENT and its affiliates and their officers, directors, shareholders, employees, and agents (CLIENT and such persons collectively, "CLIENT's Indemnified Persons") harmless against any and all third party claims in connection with any losses, claims, demands, actions, judgments, or litigation, including attorneys' fees and investigation costs (collectively, "Loss"), arising out of any breach of its obligations, representations and warranties herein.
- (b) NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR: (1) THE OTHER PARTY'S LOST REVENUES; (2) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR (3) EXEMPLARY OR PUNITIVE DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 6(c) WILL NOT APPLY TO EITHER PARTY'S GROSS NEGLIGENCE OR OBLIGATIONS UNDER SECTIONS 5, 6(a) OR 6(b).

7. **TECHNICAL OPERATIONS.**

(a) **Operational Availability:** The Service will be available on a 24x7 basis, except for scheduled downtime, which will occur from time to time on a regular basis upon reasonable notice by Noverant to CLIENT, and unscheduled maintenance. Noverant may perform unscheduled maintenance only when, in Noverant's reasonable discretion, doing so is necessary to avoid loss of Services or as otherwise mutually agreed to with CLIENT. Noverant shall endeavor when practical to provide notice to CLIENT of all unscheduled maintenance.

(b) **Disaster Recovery:** The Services include industry-standard Disaster Recovery efforts. In the case of a Disaster resulting in a complete loss of access to the Services, Noverant will restore the Services within the same data center or at an alternate site, as Noverant reasonably determines. Disaster recovery procedures are defined in the most recent version of *Noverant Backup and Recovery Procedure*, incorporated herein by reference, with key responsibilities including:

CLIENT's Responsibilities

- (i). CLIENT is responsible for all network configuration changes required by Noverant at CLIENT's premises that are associated with Disaster Recovery, such as VPN and firewall changes and any that may be necessary for CLIENT to connect to the Services.
- (ii). During a Disaster Recovery, CLIENT shall have its representative(s) available to work with Noverant's recovery team. All such CLIENT's representatives shall participate from CLIENT's site and must be sufficiently knowledgeable to allow successful testing.

Noverant's Responsibilities

- (i) Noverant is responsible for preparing the recovery site and executing the recovery service procedures upon declaration of a Disaster. Upon completion, Noverant will work with CLIENT's representatives to

perform sufficient testing to ensure that the access to the Service and databases have been recovered successfully.

(ii) Notwithstanding force majeure events, Noverant's target is for a 24-hour RPO/RTO performance level.

(c) **Backup/Recovery:** Noverant shall back up all environments in accordance with the latest Noverant Backup and Recovery Procedure. Noverant reserves the right to modify such procedures from time to time and agrees.

Noverant agrees to provide CLIENT data in suitable format at the termination of the contract and, upon successful transfer of such data, destroy all CLIENT data using secure government-approved methods.

(d) **Backup/Retention:** Noverant shall back up and retain all data in accordance with the latest *Noverant Backup and Recovery Procedure*. Noverant reserves the right to modify such procedures from time to time and agrees to notify CLIENT prior to any changes to such procedures.

(e) **On-Line Data Retention:** CLIENT data is retained on-line indefinitely during the term of the Agreement.

(f) **System Administration and Monitoring:**
All servers, storage, network, firewall and other devices are administered and managed on a 24x7 basis by Noverant or Noverant's agents. Access to client data is restricted to authorized Noverant employees.

(g) **Security:**
Security management includes day-to-day management for the firewalls, networks and servers dedicated to Noverant's customers. This service includes administering technical and procedural controls to prevent unauthorized access, prompt reporting of suspected incidents to CLIENT, use of unique and secure passwords compliant with Noverant's authentication policy, event logging and reporting, vulnerability scans, installation of security patches and fixes following changes. CLIENT administrators are responsible to define and control password policies for end user including implementation of password policies addressing password aging, reuse, minimum length and complexity.

8. **GENERAL PROVISIONS.**

(a) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. CLIENT and Noverant shall submit to the exclusive jurisdiction of the State and Federal District Courts situated in Pinellas County, State of Florida.

(b) **Independent Contractors.** Both parties agree to perform under this Agreement solely as independent contractors and shall not hold themselves out as employees or agents of the other.

(c) **Assignment.** This Agreement shall not be assigned in whole or in part by either party without 60 days' notice to the other party. Notwithstanding the preceding sentence, CLIENT may freely assign this Agreement to an affiliate within its controlled group of entities or to a successor to all or substantially all the business to which this Agreement relates.

(d) **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter within and to that extent terminates and supersedes all previous agreements, whether written or oral, relating to the same subject matter.

(e) **Notices.** All notices to be sent pursuant to this Agreement shall be in writing and delivered either in person to the designated party to be notified, by registered or certified mail, return receipt requested, or by fax/email to such party at the address shown above below or subsequently designated by either party.



If to Noverant:

Noverant, Inc.
421 Fayetteville Street, Suite 1116
Raleigh, North Carolina, 27601
Attention: Chief Executive Officer

with a copy to:

Noverant, Inc.
421 Fayetteville Street, Suite 1116
Raleigh, North Carolina, 27601
Attention: Legal/Contracts

Notices via Facsimile or Email

Noverant, Inc.: 1-888-383-7316 fgozzo@noverant.com

If to CLIENT:

City of Clearwater
100 S. Myrtle Ave.
Clearwater, FL 33756
Attention: Human Resources

with a copy to:

City of Clearwater
100 S. Myrtle Ave.
Clearwater, FL 33756
Attention: Information Technology

CLIENT: 727 562-4877 humresweb@myclearwater.com

Notices delivered in person shall be deemed given upon delivery; notices sent by mail shall be deemed given two (2) days after posting thereof; and notices given by fax or email shall be deemed given twelve (12) hours after sending thereof.

(f) **Modification and Waiver.** None of the terms of this Agreement (including all exhibits provided for herein) shall be deemed to be waived or modified except by a written document drawn expressly for such purpose and executed by the party against whom enforcement of such waiver or modification is sought. Failure or delay of either party hereto to enforce any of its rights under this Agreement shall not be deemed a modification or a continuing waiver by such party of any of its rights under this Agreement.

(g) **Force Majeure** Except for the obligation to pay money for Services rendered, each party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, such as, but not limited to, acts of God or a public enemy, acts of the government in either its sovereign or contractual capacity, fire, flood, epidemics, quarantine restrictions, strike, war (declared or undeclared), insurrection, government restriction or prohibition, force majeure or other causes reasonably beyond its control and without its fault, including the inability to secure materials on a timely basis or failure of computer equipment. The party failing to perform shall use all reasonable efforts to resume performance of this Agreement as soon as feasible.

(h) **Severability.** Should any court or regulatory agency or body determine, in a form and manner which render such determination enforceable against either of the parties, that any provision of this Agreement is void, invalid, unenforceable, or illegal, such determination shall not affect any other provision of this Agreement, and this Agreement shall, if reasonable, be construed and performed as if such void, invalid, unenforceable, or illegal provision had never been contained herein.

(i) **Counterparts.** This Agreement may be executed, by original or electronic signature, in any number of counterparts, each of which shall be regarded as an original, but such counterparts shall together constitute but one and the same agreement.

(j) **Effect.** This Agreement shall be effective only upon its execution by both parties.

(k) **Survival.** The provisions contained in Sections **5** and **6** shall survive the termination for any reason of this Agreement.



WITNESS the foregoing signatures.

CLIENT

By: _____

Name: _____

Title: _____

Date: _____

NOVERANT, INC.

By: 

Name: Francesco Gozzo, Ph.D.

Title: President and CEO

Date: October 13, 2023

Agreement Effective Date: _____

Countersigned:

Brian J. Aungst, Sr.
Mayor

Approved as to form:

Assistant City Attorney

CITY OF CLEARWATER, FLORIDA

By: _____
Jennifer Poirrier
City Manager

Attest:

Rosemarie Call
City Clerk

Exhibit A

The Scope of Work provided by Noverant is defined in its proposal submission to City of Clearwater RFP #32-23 and incorporated herein by reference, with the exception of the pricing table below.

Noverant's cost proposal below includes the one-time fees for implementation and annual fees for the LMS and the Noverant Library. Testing is included with the Sandbox and Implementation/Configuration fees. There are no extra costs for troubleshooting, building reports, and training (initial and post-launch).

The cost proposal below is based on:

Term: 3 years

Users: 1850

Cost Proposal				
Descriptions	Qty	Frequency	Unit Price	Total
One Time Fees: \$6,800				
SANDBOX ACTIVATION	1	One Time	\$ 1,900	\$1,900
IMPLEMENTATION/CONFIGURATION	1	One Time	\$ 2,400	\$2,400
INITIAL TRAINING	1	One Time	\$ 2,500	\$2,500
Recurring Fees:				
NOVERANT LMS				
<ul style="list-style-type: none"> Annual Subscription with 100 Noverant Library courses. 	1	Annual	\$62,655	\$62,655

Notes

- 1) Environments – Includes a dedicated sandbox and production environments.
- 2) Payment – Subscription fee paid annually in advance. Payments are due net 30 days.
- 3) The City can choose any 100 courses from the Noverant Library, which includes over 1,900 courses. Additional content bundles are available.
- 4) Optional Services
 - a. Pricing for additional language packs, content development, or on-site services are available and can be priced upon request.
 - b. LinkedIn Learning Subscription
 - Year 1 - \$25,530
 - Year 2 - \$40,219
 - Year 3 - \$56,166