



NUVENTIVE
MASTER SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT

This Master Software and Professional Services Agreement ("**Agreement**"), effective as of the date signed by both parties (the "**Effective Date**"), is entered into by and between Nuventive, LLC, a Delaware limited liability company with a principal place of business at 9800B McKnight Road, Suite 255, Pittsburgh, PA 15237 ("**Nuventive**"), and Rancho Santiago Community College District on behalf of Santa Ana College ("**Licensee**"). This Nuventive Master Software and Professional Services Agreement Supersedes the Software License agreement dated March 10th, 2014 and the Professional Services Agreement date March 13th, 2014.

Nuventive and its Third-Party Providers have developed certain Software and Software Services (defined below) for use by Licensee and certain designated users affiliated with Licensee as administrators, faculty or students (the "**Users**"). Any Software or Software Services licensed or made available to Licensee or its Users by Nuventive under this Agreement are referred to in this Agreement as the "**Software Products**." Use of the Software Products by Licensee and its Users shall be subject to the provisions of this Agreement.

The parties agree as follows:

1. **DEFINITIONS.** Terms used in this Agreement are defined as follows:

1.1 "**Beta Software or Services**" means Nuventive software or services, or functionality, that may be made available to Licensee, which is clearly designated as beta, pilot, limited release, developer preview, non-production, trial, evaluation, or by a similar description.

1.2 "**Confidential Information**" means, with respect to any party to this Agreement, all information or material of that party that is designated by the disclosing party as confidential or, from all the relevant circumstances, reasonably should be assumed to be confidential and proprietary. As between the parties, each party's Confidential Information shall remain the sole and exclusive property of that party. Confidential Information of Nuventive includes, but is not limited to, the Software Products, the Professional Services, Documentation in all forms, and the terms and conditions of this Agreement (including pricing and other terms reflected in all Exhibits and Order Forms). Confidential Information shall not include information or material that (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; (iv) subject to disclosure under court order or other lawful process, provided that the receiving party gives the disclosing party sufficient prior notice to contest such order or process; or (v) that is required to be disclosed or made public under any applicable public records or similar law, or any requirements of any applicable government authority.

1.3 "**Deliverable**" means any work product resulting from the Services delivered to Licensee by Nuventive, including but not limited to software programs, source and object code, specifications, designs, processes, techniques, concepts, improvements, and related Documentation.

1.4 "**Disclaiming Parties**" means Nuventive and its subsidiaries, affiliates, vendors, licensors, and contractors.

1.5 "**Documentation**" means Nuventive-provided specifications and user documentation, in all forms, relating to the Software Products or the Professional Services (e.g., user manuals, on-line help files, service descriptions, etc.).

1.6 "**Exhibit**" means any exhibit attached to this Agreement or any exhibit attached to any Order Form.

1.7 "**Fee or Fees**" means the fees charged by Nuventive to Licensee for use of the Software Products or for other services during the applicable contract term described in an Order Form or Work Order.

1.8 "**Intellectual Property Rights**" means all rights in or relating to any inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, and all other subject matter protected under patent, copyright, moral right, mask work, trademark, trade secret or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, business methodologies, technical developments, artwork, software, programming, applets, scripts and designs.

1.9 "**Licensee Data**" means data provided by Licensee and/or the Users for use in connection with the Software Services or the Professional Services.

1.10 "**Material Defect**" means any reported malfunction, error or other defect in a Software Product that: (i) can be reproduced by Nuventive and Licensee; and (ii) constitutes a substantial nonconformity with the Documentation for the Software Product.

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1.11 **"Nuventive's Network"** means the hosting environment provided by Nuventive or its Third-Party Providers to host and provide access to the Software Services.

1.12 **"Order Form"** means the ordering documents for Licensee's licensing or purchase of Software Products, Services or other products and services from Nuventive that are executed by the parties from time to time. The terms and conditions of this Agreement shall be deemed incorporated into each Order Form.

1.13 **"Personal Data"** means any personally identifiable information relating to any Users of the Software Products or other individuals that is transferred to or stored in Nuventive's Network, to which Nuventive or its Third Party Providers has or may have access in connection with its administration or management of the Software Services or otherwise in connection with its performance of its obligations under this Agreement.

1.14 **"Professional Services" or "Services"** means certain services provided by Nuventive and/or Third-Party Providers under this Agreement, as more fully described in the applicable Order Form and as otherwise agreed upon by the parties from time to time as specified in an applicable Work Order.

1.15 **"Software"** means the object code version of any software Nuventive may make available to Licensee for use at a designated site or through any Software Services, as identified in an applicable Order Form.

1.16 **"Software Services"** means certain hosted application services, including without limitation the use of any Software, provided by Nuventive and/or Third-Party Providers under an applicable Order Form, subject to the terms and conditions of this Agreement, and as otherwise agreed upon by the parties from time to time.

1.17 **"Support and Maintenance"** means the support and maintenance services provided by Nuventive for a Software Product, as described in the applicable Order Form or the service description for a Software Service. Support and Maintenance may be included in annual license or subscription Fees, or may be offered on an annual subscription basis to Licensee. If offered on an annual subscription basis, Support and Maintenance Fees may be adjusted by Nuventive annually as set forth in the applicable Order Form. Unless otherwise provided in an applicable Order Form or service description, Support and Maintenance does not include (a) visits to Licensee's site; (b) work with or relating to any third-party equipment or software; (c) configuration, setup or installation of Software Products; (d) training or consultation with Users; (e) Professional Services associated with the implementation, installation, configuration or customization of Software Products, or development of templates or models; or (f) other services associated with the Software Products, including without limitation custom development, knowledge transfer, or other services that may be covered in any service agreement with Nuventive or any third party. If Licensee requests additional support or maintenance services from

Nuventive, Nuventive may provide such support and maintenance on terms mutually agreed by the parties.

1.18 **"Term"** means, with respect to this Agreement the term set forth in Section 16 of this Agreement, and with respect to each Order Form, the initial term and any renewals applicable to any Software Product or Support and Maintenance included in such Order Form.

1.19 **"Third-Party Provider"** means any third party vendor, supplier or service provider that provides, or assists Nuventive in providing, development, implementation, installation or training services pertaining to the Software Products or any other products or services to Nuventive's licensees, or provides or assists Nuventive with consulting or other Professional Services to be provided to Nuventive's licensees.

1.20 **"Third-Party Software"** means non-embedded products and program code delivered as part of Professional Services that are provided by third parties which may interoperate with or be used in connection with the Software Products. These products and services include Microsoft applications (e.g., SharePoint applications and the Azure cloud platform) and other applications available from third parties, including through links made available through the Software Services. Nuventive makes no warranties or representations regarding Third-Party Software. Licensee may be required to enter into separate agreements with the third-parties licensing or providing these products or services, and Licensee's use thereof will be subject to such agreements and Licensee's payment of any fees or charges (whether to Nuventive pursuant to an Order Form or directly to the Third-Party Provider thereof) for such products or services.

1.21 **"Users"** means individuals who are authorized by Licensee to use the Software Products, and who have been supplied user identification and passwords by Licensee (or by Nuventive at Licensee's request). With respect to any Software Services provided by Nuventive in the form of an individual User subscription, Users shall include those individuals, affiliated with Licensee, for whom subscriptions to the Software Services have been purchased, either by such individuals or by Licensee.

1.22 **"Work Order"** means any written statement of work executed by the parties specifically referencing this Agreement, generally in the form attached hereto as Exhibit B. In the event of any inconsistencies between the terms of this Agreement and the terms as set out in a Work Order, the terms of the Work Order shall prevail.

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2.1 **Provision of License.** Nuventive shall make the licensed Software Products available to Licensee and its authorized Users as described in an applicable Order Form. Nuventive grants to Licensee a limited, nontransferable, nonexclusive right to access and use such Software Products subject to the limitations and use restrictions set forth or referenced in this Agreement and in any applicable

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2.6 Hosting, Installation On-Site and Other Related Limitations.

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5.3 **Overdue Payments.** All invoices shall be paid by Licensee within thirty (30) days of invoice date. Payments not made within such time period shall be subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under Applicable Law. Licensee will reimburse Nuventive for any costs or expenses (including, but not limited to, reasonable attorney fees) incurred by Nuventive to collect any amount that is not paid by Licensee when due.

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services for any third party or providing any products to any third party.

7. CONFIDENTIALITY.

7.1 Treatment of Confidential Information. Each party agrees that (a) it will hold any and all Confidential Information it obtains from the other party in strict confidence and will use and permit use of such Confidential Information solely as permitted under this Agreement; (b) it may disclose the other party's Confidential Information or provide access to such Confidential Information only to such party's employees and agents with a need to know such information or as otherwise permitted under this Agreement or an applicable Order Form; and (c) it may make copies of the other party's Confidential Information only to the extent permitted under this Agreement or any Order Form.

7.2 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for any breach of such party's obligations under this Section 7, and therefore, that upon any such breach or threatened breach, the non-breaching party will be entitled to appropriate equitable relief from a court of competent jurisdiction, without the necessity of posting bond or other security or proving it has sustained any actual damage. This remedy will be in addition to any other remedy available to the non-breaching party under this Agreement.

7.3 Aggregated Data. Notwithstanding any other provision of this Agreement or any Order Form, Nuventive shall have the right to compile, distribute and otherwise exploit aggregated data derived from the Software Services. Such aggregated data shall not identify Licensee or any Users.

7.4 Security and Data Breach.

7.4.1 Data Center Security. At Licensee's request, Nuventive shall provide Licensee with the name of any data center(s) or hosting location(s) used by Nuventive or its Third-Party Providers to host or store Licensee Data, including Personal Data, received from Licensee or its Users. All Licensee Data stored or at rest in any data centers or hosting locations used by Nuventive, or in transport, will be encrypted and will not be transferred (except with Licensee's prior consent) to any data center or hosting location outside of the United States. Nuventive has implemented or will implement the Data Safeguards set forth in this Section 7, and Nuventive will further implement, or cause to be implemented by its Third-Party Providers, reasonable security standards that it determines are necessary, but in no event less than industry standards, to protect (i) the physical security of the data centers and hosting locations used to maintain Licensee Data; and (ii) Nuventive's Network, all operating systems, software applications, and all data storage systems and media provided by Nuventive or its Third-Party Providers, from being subject to any viruses, malware or other harmful code.

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7.4.2 Data Safeguards. To the extent Nuventive receives or has access to Licensee Data, or stores or holds any Licensee Data, Nuventive agrees to:

(i) access and use the Licensee Data solely for the purpose of performing its obligations in accordance with the terms and conditions of this Agreement, Nuventive's applicable Privacy Policies, and the service description(s) applicable to the relevant Software Services licensed by Licensee;

(ii) maintain physical, technical, and administrative safeguards (including but not limited to those set forth in this Section, and in any event no less than industry standards in the online services industry) to protect the Licensee Data against unauthorized access, use, or disclosure while it is accessible to or held by Nuventive or its Third-Party Providers ("Data Safeguards"); and

(iii) not disclose the Licensee Data to any third party, except: (x) to its employees, consultants or Third-Party Providers for purposes of administering the Software Products and providing Professional Services, provided that such recipients are bound by confidentiality provisions no less restrictive than those set out in this Agreement; (y) to the extent required by a judicial order or other legal obligation; or (z) as expressly permitted by this Agreement, Nuventive's applicable Privacy Policies and the service description(s) or other terms and conditions made available to Licensee and its Users.

7.4.3 Data Breach. If Nuventive becomes aware of any security or data breach affecting Nuventive's Network or the Software Products, and that as a result thereof any unauthorized person has obtained access to any Licensee Data held or stored by Nuventive under this Agreement or in connection with the management or administration of Nuventive's Network or website(s) ("Data Breach"), Nuventive shall promptly notify Licensee in writing and shall fully cooperate with Licensee to prevent or stop such Data Breach. In the event of such Data Breach, Nuventive shall comply with applicable laws, and shall take appropriate steps to remedy such Data Breach.

7.4.4 Personal Data. All Personal Data to which Nuventive has access under this Agreement, will remain the property of (or subject to the rights of) the data subject, and will be subject to the limitations on use and disclosure set forth in this Agreement. Licensee hereby consents to the use, processing and/or disclosure of Personal Data only for the purposes described herein and to the extent such use or processing is necessary for Nuventive to carry out its duties and responsibilities under this Agreement or as required by law.

8. **ELECTRONIC AGREEMENTS.** Licensee acknowledges that, in order to access and use the Software Services, Users may be required to agree to certain terms of use established by Nuventive or Third-Party Providers, which will be provided to Licensee or such Users as part of the process of accessing

and using Software Services, or prior to such access being made available.

9. **LIST OF AUTHORIZED USERS.** Licensee will maintain a written list of Users who are authorized to access or use the Software Services on behalf of Licensee and will make such lists available to Nuventive on request. User log-in information shall be maintained in strict confidence and Users are not permitted to share such User log-in information with any third party. Licensee shall be solely responsible for all use of the Software Services by its Users and the compliance by its Users with this Agreement and any Exhibit or Order Form. Licensee agrees to immediately notify Nuventive if Licensee becomes aware of any loss or theft of any User log-in information or becomes aware of any unauthorized use or acquisition of its access to the Software Services.

10. **NUVENTIVE WARRANTIES.** Nuventive represents and warrants that (a) it has legal power to enter into this Agreement; (b) with respect to Software delivered by Nuventive to Licensee for installation on Licensee's system, for a period of ninety (90) days following the initial delivery the Software shall not be subject to a Material Defect (but no new warranty period will apply for any later updates or new versions of the Software provided without charge to Licensee); and (c) with respect to any subscription for Software Services, the Software Products shall materially perform without a Material Defect and substantially in accordance with the Documentation, as such Documentation may be modified or updated from time to time. Licensee's sole and exclusive remedy and Nuventive's sole and exclusive liability for breach of the foregoing warranty in clause (b) or clause (c), as applicable, shall be for Nuventive to repair or replace the defective element of the Software Product or, if repair or replacement cannot be provided within a reasonable time, Licensee may terminate the license for such Software Product and upon notice of such termination Nuventive will refund the Fees paid for any Software delivered by Nuventive to Licensee for installation on Licensee's system, or refund any pre-paid subscription Fees relating to such terminated subscription for Software Services. Nuventive shall not have an obligation under the warranties set forth above if any error or defect in operation of the applicable Software Product is caused by malfunction of hardware or software not provided by Nuventive or malfunction of any Third-Party Provider platform or hosting environment, by modification of any Software not performed or authorized by Nuventive, by operator error, or by use of the Software Product not in accordance with the Documentation or operating instructions provided by Nuventive.

11. **LICENSEE WARRANTIES.** Licensee represents and warrants that (a) it has full power, capacity and authority to enter into this Agreement and any applicable Order Form, and to perform its obligations under this Agreement; (b) any Licensee Data or other information provided to Nuventive for use in connection with the Software Services and the Professional Services does not infringe the Intellectual Property Rights, publicity or privacy rights of any person and is not defamatory, obscene or in violation of any Applicable Law (including but not limited to applicable policies and laws related to spamming, privacy and consumer protection); and (c) its use

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of the Software Products and the Professional Services will be in compliance with all Applicable Law.

12. **DISCLAIMER OF WARRANTIES.** EXCEPT AS PROVIDED IN SECTION 10 (NUVENTIVE WARRANTIES), THE SOFTWARE PRODUCTS AND THE PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. THE DISCLAIMING PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE AND NON-INFRINGEMENT. THE DISCLAIMING PARTIES ALSO DISCLAIM ANY WARRANTY REGARDING NON-INTERRUPTION OF USE, FREEDOM FROM BUGS, AND THAT USE OF THE SOFTWARE PRODUCTS AND THE PROFESSIONAL SERVICES ARE ERROR-FREE. LICENSEE EXPRESSLY AGREES AND ACKNOWLEDGES THAT ANY USE OF THE SOFTWARE PRODUCTS OR THE PROFESSIONAL SERVICES IS AT LICENSEE'S SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NUVENTIVE OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NUVENTIVE'S OBLIGATIONS UNDER THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM.

LICENSEE AGREES THE SOFTWARE PRODUCTS AND THE PROFESSIONAL SERVICES ARE NOT INTENDED TO REPLACE LICENSEE'S PROFESSIONAL SKILL AND JUDGMENT. LICENSEE IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LAW.

THE SOFTWARE PRODUCTS AND THE PROFESSIONAL SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. LICENSEE ACKNOWLEDGES AND AGREES THAT THE DISCLAIMING PARTIES DO NOT OPERATE OR CONTROL THE INTERNET AND THAT (a) VIRUSES, WORMS, TROJAN HORSES OR OTHER UNDESIRABLE DATA OR SOFTWARE AND (b) UNAUTHORIZED USERS - MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE THE LICENSEE DATA AND LICENSEE'S WEBSITES, COMPUTERS OR NETWORKS. THE DISCLAIMING PARTIES SHALL NOT BE RESPONSIBLE OR LIABLE FOR SUCH ACTIVITIES, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISCLAIMING PARTIES.

13. **INDEMNIFICATION BY NUVENTIVE.** Nuventive shall defend, indemnify and hold Licensee harmless against any loss, damage or cost (including reasonable attorneys' fees) awarded against Licensee by a court of competent jurisdiction in connection with claims made or brought against Licensee by a third party that allege that Licensee's use of a Software Product in accordance with the Documentation and as contemplated under this Agreement infringes the Intellectual Property Rights of such third party; *provided, however*, that the foregoing indemnification shall not apply to any such loss, damage or cost that is attributable to (a) Licensee's use of the Software Product in violation of or outside the scope of this Agreement or an Order Form; (b) the use by Licensee of a superseded or altered (other than by Nuventive or its contractors or agents) release of the Software Product; (c) the combination, operation or use

of the Software Product with any third-party platform, operating system, service, software, hardware or other materials; (d) any modification to the Software Product not made or authorized by Nuventive; or (e) Nuventive's compliance with any instructions, designs or specifications provided by Licensee to Nuventive. As a condition to the right of Licensee to receive the foregoing indemnification, Licensee shall (i) promptly provide written notice of the claim to Nuventive, (ii) provide Nuventive sole control of the defense and settlement of the claim (provided that Nuventive may not settle any claim unless Licensee is released of all liability to the third party, other than an obligation to cease use of any allegedly infringing Software Product or component thereof), and (iii) provide to Nuventive, at Nuventive's cost, all reasonable assistance with respect to the defense of such claim.

14. **SUSPENSION OF SERVICES AND REMOVAL OF CONTENT.** Nuventive may, in its sole discretion, suspend Licensee's or any User's license or subscription to access the Software Services or the Professional Services or reject or remove from the Software Services or the Professional Services any Licensee Data (a) to prevent damages to, or degradation of, Nuventive's Network, the Software, the Software Services or the Professional Services; (b) to comply with any Applicable Law, court order or other governmental request; (c) to otherwise protect Nuventive from potential legal liability; or (d) if an invoice remains unpaid for forty-five (45) or more days from the invoice due date. Nuventive shall use reasonable efforts to provide Licensee with notice prior to or promptly following any suspension of the Software Services or the Professional Services or removal of any Licensee Data. Nuventive will restore access to the Software Services and the Professional Services after the event giving rise to suspension has been resolved to the satisfaction of Nuventive. This Section shall not be construed as imposing any obligation or duty on Nuventive to monitor Licensee's or any other person's use of the Software Products or the Professional Services.

15. **DISCLAIMER AND LIMITATION OF LIABILITY AND DAMAGES.**

15.1 **Disclaimer and Limitation of Liability and Damages.** NONE OF THE DISCLAIMING PARTIES SHALL HAVE ANY LIABILITY TO LICENSEE OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA OR OTHER INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM, INCLUDING USE OF THE SOFTWARE PRODUCTS OR THE PROFESSIONAL SERVICES. THE TOTAL LIABILITY OF THE DISCLAIMING PARTIES TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM OR USE OF THE SOFTWARE PRODUCTS OR THE PROFESSIONAL SERVICES SHALL NOT EXCEED TWICE THE TOTAL FEES PAID TO NUVENTIVE BY LICENSEE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH IN

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THIS AGREEMENT FAIL IN THEIR ESSENTIAL PURPOSE. IN ADDITION, THOSE REPRESENTATIONS, WARRANTIES, COVENANTS OR AGREEMENTS OF NUVENTIVE WHICH SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT SHALL SURVIVE ONLY FOR A PERIOD OF ONE YEAR AFTER SUCH TERMINATION OR EXPIRATION, AND LICENSEE MAY BRING AN ACTION AGAINST NUVENTIVE FOR BREACH OF ANY SUCH REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT ONLY IF WRITTEN NOTICE OF SUCH CLAIMED BREACH IS PROVIDED TO NUVENTIVE WITHIN SUCH ONE YEAR PERIOD AND ANY ACTION IS COMMENCED WITHIN SUCH ONE YEAR PERIOD.

15.2 **Independent Allocations of Risk.** THE PURPOSE OF EACH PROVISION OF THIS AGREEMENT AND ANY EXHIBIT OR ORDER FORM THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT AND SUCH EXHIBIT OR ORDER FORM BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY NUVENTIVE TO LICENSEE AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM. THE LIMITATIONS IN THIS SECTION 15 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM.

16. **TERM.** The Term of this Agreement shall begin on the Effective Date and shall continue for a period of three (3) years. For as long as any Software Service subscription pursuant to any Order Form shall remain in effect, this Agreement shall automatically renew for two (2) successive one-year terms, unless either party gives notice to the other party of its intent not to renew at least ninety (90) days prior to the expiration of the then-current Term (subject to Licensee's rights of termination set forth in Section 5.5). Notwithstanding this Section 16, the terms and conditions of this Agreement shall remain in full force and effect (i) with respect to any perpetual license for as long as such license remains in effect; (ii) with respect to any license for a fixed or renewable term, or a subscription for Software Services, until the earlier of (a) the termination of such license or subscription or (b) the termination of this Agreement and all Exhibits and Order Forms. If this Agreement terminates for any reason, the parties may reinstate this Agreement by entering into an Order Form for any Software Product(s), which Order Form references that the Order Form shall be subject to this Agreement.

17. **TERMINATION.** This Agreement and all Exhibits and Order Forms shall terminate (a) on the ninetieth (90th) day after Nuventive gives Licensee notice of Nuventive's intent to terminate for any reason or no reason; (b) on the thirtieth (30th) day after either party gives the other party written notice of a breach by the other party of any material term or condition of this Agreement, any Exhibit, any Order Form or any other agreement between Nuventive and Licensee, unless the breach is cured before that 30th day; (c) upon written notice by either party, immediately, if (i) a receiver is appointed for the other

party or its property, (ii) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes a general assignment for the benefit of its creditors, or (iii) any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy or similar law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof; or (d) on sixty (60) days' notice from Nuventive in the event Nuventive generally ceases providing the Software Products to its customers. If Nuventive terminates this Agreement under clause (a) or (d) of this Section, or Licensee terminates this Agreement under clause (b) or (c) of this Section, Nuventive shall promptly refund to Licensee any related prepaid but unused Fees as of the effective date of the termination.

If use of a Software Product or any portion thereof becomes, or in Nuventive's sole opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, Nuventive may, in its discretion, (i) procure the right for Licensee to continue to use the Software Product, (ii) replace or modify the Software Product with software of comparable quality and performance capabilities, or (iii) terminate this Agreement and any applicable Exhibit or Order Form and refund any related prepaid but unused Fees.

Any right or license granted under this Agreement, any Exhibit, or any Order Form, shall terminate on termination of this Agreement and the applicable Exhibit or Order Form.

18. **PUBLICITY; ANNOUNCEMENTS.** During the Term and thereafter neither party will make any media release or other public announcement relating to or referring to this Agreement or any Exhibit or Order Form without the other party's prior written consent. Notwithstanding the foregoing, Nuventive may use Licensee's name, trade name, trademarks, service marks and logo designs in identifying Licensee as a client in Nuventive, and Licensee may inform Users of its relationship with Nuventive and the Software Products it will be obtaining from Nuventive.

Except as set forth above in this Section 18, neither party shall acquire any right to use, and shall not use, without the other party's prior written consent, the names, trade names, trademarks, service marks, artwork, designs or copyrighted materials of the other party or its affiliates, employees, directors, shareholders, assigns, successors or licensees (a) in any advertising, publicity, press release, or presentation; (b) to express or to imply any endorsement by the other party; or (c) in any manner other than expressly in accordance with this Agreement or any Exhibit or Order Form.

19. **PROFESSIONAL SERVICES.**

19.1 **Services.**

19.1.1 **Nuventive Obligations.** During the Term of this Agreement, Nuventive shall use commercially reasonable efforts to perform the Services, including if applicable, the provision of any Deliverables set forth on any applicable Work Order, in a timely manner with qualified resources and in

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accordance with the specifications and schedule set forth in the Work Order. Nuventive shall use commercially reasonable and industry standard methods to prevent the Services from introducing any viruses, malware or harmful code into any Licensee computer system or network. Nuventive's indemnification obligations in this Agreement relating to infringement claims shall apply with respect to any Deliverables provided to Licensee by Nuventive under this Agreement.

19.1.2 Licensee Obligations. Nuventive's ability to perform the Services depends upon, among other things, Licensee providing, in a timely manner, technical data, computer facilities, programs, files, documentation, test data, sample output, and such other relevant information and data, resources, assistance and cooperation reasonably required by Nuventive for the performance of the Services. Nuventive will not be responsible for any deficiency in performance that results from Licensee's failure to cooperate with Nuventive. Licensee is responsible for the content, accuracy, completeness and consistency of all such data, materials and information supplied by it.

19.1.3 Change Orders. Any material change in the Services or any Deliverables will be confirmed by a mutually agreed written amendment to the Work Order. Either party may at any time during the progress of the Services propose changes, and the parties will negotiate in good faith regarding any adjustment to the specifications, Deliverables, timetables and Fees, if applicable.

19.1.4 Later Software Product Releases and Support. Nuventive is not responsible for the migration or re-implementation of the Services for later releases of any Software Product, unless Licensee enters into a separate Work Order for such migration or re-implementation. If Licensee desires to receive support for any Deliverables, Licensee may enter into a separate agreement for such services pursuant to mutually agreed support terms and conditions.

19.1.5 Fees Based on Estimates. Unless a Work Order specifies a fixed price, cost or Fee estimates in a Work Order are only for Licensee's budgeting and Nuventive's resource scheduling purposes. Such estimates do not include applicable taxes. Nuventive will invoice Licensee for actual time spent and expenses incurred in performing the Services; such invoice may exceed amounts estimated in the applicable Work Order.

19.1.6 No Employment Relationship. The parties acknowledge and agree that this Agreement does not create an employment relationship between Nuventive or its personnel and Licensee. Nuventive shall have sole control of the manner and means of performing the Services. Neither Nuventive nor its personnel shall be entitled to any Licensee benefits, including, without limitation, life insurance, death benefits, accident or health insurance, qualified pension or retirement plans or other employee benefits.

19.2 Fees and Payment.

19.2.1 Payment. Licensee will pay Nuventive the Fees in the applicable Work Order on a time and materials basis (unless

otherwise provided in the Work Order), and such Fees are payable net thirty (30) days from delivery of an invoice. Licensee will reimburse reasonable and necessary business travel expenses incurred by Nuventive in connection with the performance of the Services.

19.2.2 Charges for Working Hours. For Services provided on a time and materials basis a minimum of one (1) hour per day will be charged for remote Services and a minimum of four (4) hours a day for onsite Services. Regular working hours are between 8:00 am and 6:00 pm, Eastern Time; such working hours may be adjusted in a Work Order for Services performed in other time zones. For Services required to be performed outside of regular working hours, a surcharge may apply. Hourly rates set forth in the Work Order may be adjusted from time to time by Nuventive, but not more frequently than once in any twelve-month period.

19.2.3 Taxes. All amounts as set out in a Work Order are exclusive of any sales, value-added, or other similar taxes imposed by applicable law. Licensee shall pay or reimburse Nuventive for all such relevant taxes, except for taxes based on Nuventive's income.

19.3 Term and Termination.

19.3.1 Effective Term of Work Orders. Work Orders will take effect on the date signed by the Licensee and will remain in effect until the Services have been completed, unless earlier terminated in accordance with the provisions of the Work Order or this Agreement.

19.3.2 Termination of Work Orders. Either party may terminate any Work Order(s) if the other party commits a breach of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days following its receipt of a written notice of such breach from the non-breaching party.

19.4 Ownership of Deliverables.

19.4.1 Non-Exclusive. Nuventive is in the business of providing services, similar to the Services, to a variety of licensees. Licensee and Nuventive agree that the relationship established between Licensee and Nuventive by this Agreement is non-exclusive.

19.4.2 Ownership of Program Code. Nuventive shall own (i) pre-existing program code authored or created by Nuventive, (ii) any modifications to any Nuventive Software Products, which code shall be and remain the property of Nuventive, and (iii) all right, title and interest (including all Intellectual Property Rights) in and to Nuventive branding elements and the Deliverables (excluding any Licensee branding elements, or any other content, information or materials embedded therein provided and owned by Licensee). Upon receipt of payment in full for all Services, Nuventive grants to Licensee, with respect to program code owned by Nuventive as set forth in clauses (i) and (iii) above (including program code embedded in any Deliverable), a worldwide, nonexclusive, nontransferable

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limited right and license (without right to sublicense) to use such program code for its own internal purposes, and not for commercial resale, distribution or otherwise, subject to any other rights or restrictions set forth in the applicable Work Order. Such license shall remain in effect for as long as Licensee continues to license or subscribe to any Software Product with which the licensed code or Deliverables may be used. Licensee shall not sell, disclose or otherwise make any such program code or the Deliverables available to any third party without the prior written consent of Nuventive. Except for the limited rights and licenses expressly granted hereunder, no other license is granted in nor is any other use permitted with respect to any program code owned by Nuventive and which constitutes part of the Deliverables. Nuventive is the sole and exclusive owner of all right, title and interest in any and all any know-how, expertise, knowledge or experience possessed by Nuventive prior to the Effective Date or developed or learned by Nuventive in connection with providing the Services. Licensee grants to Nuventive, with respect to any Licensee branding elements, or any other Licensee content, information or materials, a worldwide, nonexclusive, nontransferable limited right and license to use such content, information and materials for the purposes of performing the Services and its other obligations under this Agreement, and for no other purpose. Except as expressly set forth herein, no license is granted by either party to or the other with respect to any technical or business information or Intellectual Property Rights.

19.5 Warranties and Limitation of Liability.

19.5.1 Nuventive Warranty as to Services. Nuventive warrants that it will perform the Services in a professional and workmanlike manner, in accordance with performance standards generally prevailing in the industry, and substantially in accordance with the terms of the applicable Work Order.

19.5.2 DISCLAIMER. EXCEPT AS SPECIFICALLY STATED IN SECTION 19.5.1 ABOVE, NUVENTIVE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO ANY DELIVERABLES, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT. NUVENTIVE DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

19.5.3 CONSEQUENTIAL DAMAGES. NEITHER NUVENTIVE, NOR ITS MANAGERS, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS OR AGENTS, WILL BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT, EVEN IF NUVENTIVE OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19.5.4 REMEDIES. LICENSEE'S SOLE REMEDY IN THE EVENT OF ANY BREACH OF WARRANTY OR COVENANT IN THIS AGREEMENT SHALL BE NUVENTIVE'S REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF SUCH REPERFORMANCE

DOES NOT CURE THE DEFICIENCY, LICENSEE SHALL BE ENTITLED TO RECEIVE A REFUND OF ANY AMOUNTS PAID BY LICENSEE FOR THE DEFICIENT SERVICES. EXCEPT FOR NUVENTIVE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL NUVENTIVE'S TOTAL AGGREGATE LIABILITY PURSUANT TO THIS AGREEMENT FOR DEFICIENT SERVICES EXCEED TWICE THE FEES PAID BY LICENSEE UNDER THE WORK ORDER GIVING RISE TO THE CLAIM.

20. GENERAL PROVISIONS.

20.1 Assignment. Neither party may assign any of its rights or obligations under this Agreement or any Exhibit or Order Form, whether by operation of law or otherwise, without the prior written consent of the non-assigning party. Any attempt by a party to assign its rights or obligations under this Agreement or any Exhibit or Order Form in breach of this Section shall be void and of no effect. Notwithstanding the foregoing, Nuventive may assign this Agreement, and any Exhibit or Order Form, to any entity succeeding to all or substantially all of the business or assets of any Nuventive line of business by merger, combination, consolidation, reorganization or the sale or acquisition of assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

20.2 Non-solicitation. During the term of this Agreement and for a period of one year thereafter, neither party will, directly or indirectly, knowingly employ or solicit the employment or services of any employee or independent contractor of the other party without the prior written consent of the non-soliciting party. The term "solicit the employment or services" specifically excludes any effort by a party to attract applicants (e.g., by general recruitment through advertisements, internet job postings, etc.) if not specifically targeted to or specifically designed to attract the other party's employees or contractors.

20.3 Force Majeure. Except for the payment of money as described in Section 5, neither party shall be liable for any failure or delay in performance under this Agreement or any Exhibit or Order Form that is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

20.4 Arbitration. Except with regard to actions for enforcement or protection of Nuventive's Intellectual Property Rights, equitable relief or any action necessary to enforce the award of an arbitrator, any dispute or controversy arising out of or relating to this Agreement, any Exhibit, any Order Form, the Software Products or the Professional Services shall be resolved by final and binding arbitration administered by JAMS and conducted in accordance with and subject to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those

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Rules. Any arbitration conducted pursuant to this Section 20.4 will take place in the jurisdiction in which the respondent party is located. For those matters involving enforcement or protection of Nuventive's Intellectual Property Rights, equitable relief, or any action necessary to enforce the award of the arbitrator, a party shall have the right to institute an action in a court of proper jurisdiction. With regard to discovery, the parties agree that no requests for admissions will be permitted and interrogatories will be limited to identifying (a) persons with knowledge of relevant facts and (b) expert witnesses and their opinions and the bases therefor. In any arbitration arising out of or related to this Agreement, the arbitrator(s) may not award any incidental, indirect or consequential damages, including damages for lost profits. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof. Other than those matters involving enforcement or protection of Nuventive's Intellectual Property Rights, equitable relief, or any action necessary to enforce an arbitration award, the parties agree that the provisions of this Section 20.4 are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal. Any award entered by the arbitrator(s) shall be final and judgment thereon may be entered in any court having jurisdiction. The prevailing party shall be entitled to recovery of costs, fees (including reasonable attorneys' fees) and/or taxes paid or incurred in obtaining the award. No action or proceeding, regardless of form, arising out of this Agreement, may be brought or commenced by either party more than one (1) year after the cause of action has arisen.

20.5 **Governing Law.** The interpretation and enforcement of this Agreement and any Exhibit or Order Form shall be governed by the law of the Commonwealth of Pennsylvania without reference to its choice of law rules. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the foregoing with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

20.6 **Waiver of Jury Trial.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY EXHIBIT OR ORDER FORM, ANY TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY EXHIBIT OR ORDER FORM IF SUCH LEGAL PROCEEDING IS SOLELY BETWEEN THE PARTIES TO THIS AGREEMENT.

20.7 **Interpretation.** The parties have had an equal opportunity to participate in the drafting of this Agreement and any Exhibit or Order Form. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will

include the singular, and the gender of any pronoun will include all genders. The term "including" means "including, without limitation."

20.8 **Counterparts.** This Agreement and any Exhibit or Order Form may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement. This Agreement and any Exhibit or Order Form may also be executed and delivered by facsimile or PDF and such execution and delivery will have the same force and effect of an original document with original signatures.

20.9 **Entire Agreement; Amendment.** This Agreement and any Exhibit or Order Form constitutes the entire agreement between the parties with regard to the subject matter of this Agreement and such Exhibit or Order Form. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement, except as referenced herein. No modification, amendment or waiver of any provision of this Agreement or any Exhibit or Order Form shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement, any Exhibit or Order Form, the terms of such Exhibit or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a contract, purchase order or in any other order documentation (excluding any Exhibit, Order Form or Nuventive service description) shall be incorporated into or form any part of this Agreement or any Exhibit or Order Form, and all such terms or conditions shall be null and void.

20.10 **Severability.** If any provision of this Agreement or any Exhibit or Order Form is found or deemed by a court to be invalid or unenforceable, such provision shall be severable from the remainder of this Agreement or such Exhibit or Order Form and shall not cause the invalidity or unenforceability of the remainder of this Agreement or such Exhibit or Order Form. If any material limitation or restriction on the use of any Software Product or the Professional Services under this Agreement or any Exhibit or Order Form is found to be illegal, unenforceable or invalid, Licensee's right to use the Software Product or Professional Services will immediately terminate.

20.11 **Waiver.** Neither party shall by mere lapse of time without giving notice or taking other action under this Agreement be deemed to have waived any breach by the other party of any of the provisions of this Agreement or any Exhibit or Order Form. Further, the waiver by either party of a particular breach of this Agreement or any Exhibit or Order Form by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement or such Exhibit or Order Form.

**NUVENTIVE
MASTER SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT**

20.12 **Survival.** The following sections of this Agreement shall survive termination or expiration of this Agreement: 2.2 through 2.5; 3.2.1 through 3.2.5; 3.3 through 3.6; 3.8; 5; 7; 9 through 15; 17; 18; 19.2; 19.4; 19.5.2 through 19.5.4; 20.2; 20.4 through 20.13.

20.13 **Notices.**

20.13.1 **Delivery of Notices.** All notices under this Agreement or any Exhibit or Order Form shall be in writing and shall be deemed to have been given upon (a) personal delivery; (b) the second business day after deposit with a reputable overnight courier service for next-day delivery; (c) the second business day after mailing by first class mail; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by email (subject to confirmation or actual receipt, and the provisions of Section 20.13.2 below). Notices to Nuventive shall be addressed to the attention of _____, with a copy to its Chief Executive Officer. Notices to Licensee shall be addressed to Licensee's signatory of this Agreement unless otherwise designated below or in any Exhibit or Order Form. Any party may change the address at which it receives notices by giving written notice to the other party in the manner prescribed by this section.

20.13.2 **Electronic Notices.** Notices or other communications under this Agreement or regarding use of the

Software Products or any services ("**Communications**") may be provided to Licensee and its Users electronically. Licensee agrees that such Communications may be in electronic form. Electronic Communications may be delivered to any email address provided by Licensee or its Users for such purpose, or Communications may be posted on the pages within Nuventive's website. Communications may be printed and retained, and Nuventive recommends that Licensee print and retain copies of all Communications. All Communications in either electronic or paper format will be considered to be in "writing". Nuventive reserves the right but assumes no obligation to provide Communications in paper format. Notwithstanding the foregoing, Nuventive will send a copy of any notice of Licensee default or termination of this Agreement or any license or subscription to Licensee by first class mail at the Licensee's address set forth on Exhibit A, or any other address communicated to Nuventive by Licensee for the receipt of any notices under this Agreement. Licensee may revoke its consent to receive electronic Communications by notifying Nuventive of its decision to do so, by sending an e-mail message to Nuventive at support@nuventive.com or by telephoning Nuventive support at 877-427-4768 in the United States. If Licensee revokes its consent to receive Communications electronically, Nuventive may terminate Licensee's right to use the Software Services.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement as of the Effective Date first written above.

Nuventive, LLC

By: _____

Name: _____

Title: _____

**Rancho Santiago Community College District on
Behalf of Santa Ana College:**

By (Print): Peter J. Hardash

Name (Sign): _____

Title: Vice Chancellor,

Business Operations/Fiscal Services

**NUVENTIVE
MASTER SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT**

Exhibit A

Nuventive Software: Nuventive Improve™ (Formerly TracDat)
Nuventive Connect – LMS™

Licensee: **Rancho Santiago Community College District on behalf of Santa Ana College:**

Designated Contact: Dr. Bart Hoffman, VP of Administrative Services

Contract Term: **Three Years**

License Type: Subscription Service License for Software Component

Subscription/Software: Nuventive Improve™ and Nuventive Connect - LMS™

Annual Subscription Fees:

Nuventive Improve™:	\$30,368
Nuventive Connect-LMS™:	\$ 5,040 (for Santa Ana College's instance of Canvas by Instructure)

***TOTAL Annual Subscription Fees: \$35,408**

***Actual Initial Term Subscription Fees for Nuventive Improve will include additional fees accrued during the period between March 9, 2019, the termination date of the prior TracDat Software License Agreement dated March 10, 2014 and the date this Agreement is executed, as noted in Exhibit B.**

Additional fees shall be due and owing under the terms set forth in Section 19.2.1 Additional Fees shall be accrued monthly at a rate of \$2,531 a month, or 1/12 of the annual Nuventive Improve Subscription fee.

Alternatively, Licensee may elect to pay in full the fees due and owing under the License Agreement dated March 10th, 2014, \$30,368. Such fees were due and owing on March 9th, 2019 for the 2019 subscription term. Fees paid for the 2019 subscription term will be applied pro-rata to the this new Agreement.

Special Terms: Upon the expiration of this initial three-year commitment, this Agreement for Nuventive Software (Nuventive Improve™ and Nuventive Connect - LMS™) shall automatically renew for two (2) consecutive additional one-year terms unless either party provides written notification to the contrary at least sixty days prior to the expiration date of the then current term. Any renewal is conditioned on Licensee having a fully paid up subscription for the applicable software for the applicable renewal term. After year-three, pricing shall be at the then current pricing for the applicable software Package, as specified by Nuventive and noticed to Licensee, or as otherwise agreed to by Nuventive and Licensee by separate amendment of this Agreement. Any increase in fees invoiced for renewal terms shall not exceed the then current CPI+8%.

SUPPORT AND MAINTENANCE

Support. NUVENTIVE, at its sole option, at any time, may modify the Application, issue new versions of the Application, or establish rules relating to use of the Application, or after the end of Term or any renewal thereof cancel or discontinue the Application. Upon activation of Licensee's subscription, NUVENTIVE shall provide to Licensee Support Services for the NUVENTIVE Software. NUVENTIVE will provide on-going Support Services to Licensee's Designated Users until the earlier of (i) the termination or expiration of this Agreement or (ii) such time as Licensee notifies NUVENTIVE that it is no longer authorizing users to use the Application. Support services shall include: (i) diagnosis and response to Material Defects via

**NUVENTIVE
MASTER SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT**

telephone or email; and (ii) providing telephone and email support and providing qualified personnel to aid in the diagnosis and response to Material Defects. NUVENTIVE shall provide telephone consultation within two (2) business days of NUVENTIVE's receipt of a telephone request from a Designated Contact for Support Services during Nuventive Business Hours (Monday-Friday, 9 a.m.-5 p.m. Eastern Time). For calls received after Nuventive Business Hours, NUVENTIVE shall provide a means whereby requests for consultation can be recorded outside of Nuventive Business Hours. Training on how to use the Application, if offered by NUVENTIVE to Licensee pursuant to Exhibit A, will be provided to Licensee at the rates set forth on Exhibit B.

Exhibit A (continued)

How to Reach Us

Worldwide Web:	http://www.nuventive.com
Email:	support@nuventive.com
Technical Support:	877-427-4768
Fax:	412-847-0285

Specifications and Requirements:

Nuventive Improve™ Requirements: End User Requirements- Clients may either use a Microsoft Windows based operating system or Apple OSX. Clients must be running Microsoft Internet Explorer 11 or Edge, Mozilla Firefox, Safari or Chrome. Nuventive generally works to be compatible with new versions of these browsers following their release but in advance cannot make any guaranties regarding timing or specific versions.

Nuventive Connect - LMS™ Requirements: Clients may either use a Microsoft Windows based operating system or Apple Mac. Clients must be running Microsoft Internet Explorer or Edge, Mozilla Firefox, Safari, or Google Chrome - all stable versions as designated by Google. Nuventive supports selected versions of Microsoft Internet Explorer or Edge, Mozilla Firefox, Safari, and Google Chrome. Nuventive generally works to be compatible with new versions of these browsers following their release but in advance cannot make any guaranties regarding timing or specific versions.

EXHIBIT B

WORK ORDER

1. Administration	
Customer:	Rancho Santiago Community College District on behalf of Santa Ana College
Address:	1530 West 17 th Street, Santa Ana, CA 92706
Customer Contact:	Dr. Bart Hoffman, VP of Administrative Services
Customer Phone:	Hoffman Bart@sac.edu
Customer Email:	714-564-6304
Customer Purchase Order Number:	
Nuventive Professional Services Contact:	David Choban Director of Professional Services Phone: 724-772-8071
Nuventive Sales Contact:	Frank Marshall Client Success Manager Phone: 804-448-0897

2. Work	
<u>Nuventive Professional Category:</u>	
Nuventive Improve Managed Services- annual fee (three-year commitment)	\$7,600
Nuventive's Support Team will work with the College to setup AD Authentication from both a data security and user experience perspective	
	N/A
*any additional Professional Services of Training will be \$220/hour, subject to annual adjustment	
Total:	\$7,600

3. Work Details
High level description of work to be provided: <i>Please see attached document(s).</i>
Project assumptions, constraints: <i>N/A</i>
Location(s) where the Services will be rendered: <i>Remote</i>
All Professional services will be delivered only by Nuventive Employees.

4. Additional Terms & Conditions
<i>If there is any on-site professional services or training, travel & expenses related to the on-site delivery will be billed at actual expense incurred.</i>
<i>Upon the expiration of this initial three-year commitment, this Agreement for Managed Services at the level specified above shall terminate.</i>

Exhibit B (continued)

5. Compliance
<i>Acceptance by authorized Customer representative</i>
Rancho Santiago Community College District on behalf of Santa Ana College PLEASE SIGN

Print Name of Authorized Representative:**Peter J. Hardash****Authorized Representative Job Title:****Vice Chancellor,
Business Operations/Fiscal Services****Authorized Representative Signature:**
Date:

ATTACHMENT A
Service Description for Nuventive Connect – LMS for Canvas
For Nuventive Improve

Based on the DataSense EdTech Platform, Nuventive Connect – LMS *for Canvas by Instructure* will provide direct integration between a one (1) client Learning Management System (LMS) and Nuventive Improve.

Nuventive Responsibility

1. Review implementation roadmap and discuss DataSense connection method
2. Assign actions based on roles/ responsibilities (per Project Plan)
3. Identify target completion dates for integration steps
4. Begin construction of Integration Workbook
5. Answer questions about source field mappings
6. Establish connection to college/university LMS
7. Integration Workbook completed and reviewed by college/university
8. Review available source data
9. Construct data flows in DataSense
10. DataSense acquires all necessary data from source system
11. Identify and resolve issues
12. Job automation scheduled
13. Validate data in EDS
14. Finalize all Integration Workbooks
15. Finalize with client on Import process and Import Options
16. Assist in optimizing data collection process

Client Responsibility

1. Provide integration access to valid use case data on test or production LMS system.
Areas that may be affected:
 - Courses
 - Rosters
 - Assignments
 - Measures
 - Assignment Submissions
 - Students
 - Demographics
2. Valid Login account / credentials to LMS to view source data.
3. Direct contact information for LMS administrators who are responsible for the integration and working with development team.
4. Customer to work with Nuventive to provide access and mapping to LMS data - Estimated 4-8 hours of “LMS Administrator” time over 4 to 6-week project timeline.

ATTACHMENT B
Managed Services
For
Nuventive Improve

Managed Services include:

- **On-going Configuration** - Nuventive will perform all on-going configuration required to use the solution for areas initially configured during implementation **as well as new areas requested**. This includes:
 - Unit Management - Adding, modifying and deleting assessment units and reporting units as well as defining Unit Types.
 - User Roles – Custom roles will be created to support the specific needs/permissions of users.
 - Labels – Terms and labels within the platform will be modified to support the planning and assessment language used at your institution.
 - List Values – Drop-down values and multi-select lists will be modified to support your planning and assessment needs.
 - Home Page Rules – Flag filters and rules will be managed to support notifying end users of planning areas that are out of compliance.
 - Navigation Settings – Features will be turned off/on based on the needs of each of your units.
 - Lock Dates and Home Page Rules – Notification flags that appear on each unit's home screen will be based on rules defined by your institution.
 - Report Settings – Reports will be turned on/off based on user needs.

- Custom Fields – Custom fields will be added to forms to support and enhance planning and assessment needs.
 - Course Management – Course lists will be uploaded and assigned to the various academic units.
- **Ad Hoc Reporting** – Nuventive will assist the client in creating ad hoc reports as needed to support the client’s reporting needs.
- **Outcomes Upload** – Nuventive will perform an upload of new program and/or course outcomes twice a year. Nuventive will provide the client with an Excel template. The Excel template will be filled out by the client with the outcomes to be uploaded into the platform.
- **Dedicated Professional Services Consultant** – A dedicated services consultant will be assigned for on-going questions/consultation while the managed services contract is active.
- **On-going support for client ‘Trainers’** – Nuventive will provide on-going support for client ‘Trainers’ to ensure that they are able to provide training/support to their end users.
- **Scheduled ‘Touch Point’ Webinars** – Nuventive will hold 3 touch point webinars (Fall, Winter, Summer) with the client. During these webinars, Nuventive consultants will:
 - Review the platform configuration with the client
 - Discuss any new features that need to be configured
 - Provide the client with an update on new features planned for the platform, and determine if the client wishes to implement those features
 - Review end user training/feedback and make recommended modifications
 - Provide an overview to the client’s executive sponsor during one of the touchpoints each year

Attachment C
Service Level Agreement
Azure Hosting Services

SERVICE LEVEL AGREEMENT

The agreement covers the provision and support of the Nuventive hosting environment, which provides the computer hardware as well as the software and access to the infrastructure and other services in the Nuventive Improvement Platform. This agreement remains valid until revised and will be reviewed annually.

Service Description

The Nuventive hosting environment (Azure) consists of the hardware, software, and supporting infrastructure for end-user access to the Nuventive Improvement Platform.

Service Support Hours

Customers can expect support for the service to be available during all regular business hours, as well as extended hours upon request.

Regular hours: Monday - Friday, 8:00 A.M. to 6:00 P.M. EST

Customer Support

The point of contact for users will be through the Support Desk.

Phone: 877-427-4768

E-mail: support@nuventive.com

- Nuventive Support policy is to answer all Support emails and return any Support voicemails within 24 hours.
- Rapid response times based on pre-defined, easily understood severity levels
- To ensure a high level of satisfaction, escalation paths are explicit and easy
- If required to resolve the problem, the support team has full access to the development and technical staff including the CTO.
- Nuventive will provide after hours and weekend support if notified by a customer in advance of special circumstances.

If all Support Desk agents are unavailable, an effort to return all messages within 4 hours will be made. More than 90 percent of all Support Desk contacts will be handled within 30 minutes of message receipt. Incident resolution is prioritized by severity of the reported issue.

Service Availability

Required availability for the hosting service is 99.5 percent uptime, not counting planned maintenance times. The 99.5 percent availability metric will be measured by a rolling 6-month period.

All hosting services and user access is available 24x7x365.

Service Performance

Designed for optimal performance, the Nuventive software should not keep users waiting for response to an input for more than typical industry standard. This excludes the execution of reports and longer running processes. Any performance issues and extended latency should be reported to the Support Desk for incident resolution.

IT Service Continuity

In the event of a disaster, we leverage the capabilities of our hosting environment (Azure) to rebuild the application environment. This can be done quickly – 2 hours or less. Application databases are redundantly backed up to geographically separate Azure data centers and can be restored to any point in time (5-minute increments) in the previous 35 days. Application environments are maintained in a source control repository and can be deployed to any Azure data center in minutes.

Service Reviews

Reviews of the service will be conducted by Management in conjunction with the Customer upon request.

Attachment D
Data Destruction Policy

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Nuventive Customer Termination and Data Destruction Policy

September 2019

Policy

For a period of 30 days after the termination of Licensee's contract, or for a period of time as specified in the License Agreement, Nuventive shall continue to backup and store Licensee's database containing Licensee Data. During this period, Nuventive shall, upon written request of the Licensee, make the database available via download. After the 30-day period, Nuventive shall delete all Licensee Data in its systems or otherwise in its possession or under its control unless Licensee specifically requests in writing that such Licensee Data not be deleted. Without such a request, Licensor will delete all Licensee Data after such 30-day period, even if Licensee has not requested a transfer or a transfer to the Licensee has not taken place. Within 48 hours of deleting Licensee Data, Nuventive shall notify licensee of data destruction. Notification shall be provided via means described in Licensee agreement.

Scope

This policy applies to all Nuventive applications and databases residing on Nuventive's internal or hosted computer networks.

Requirements

1. Remove access to Licensee Data upon contract termination
2. Maintain Licensee Data for 30 days after contract termination
3. Provide database to Licensee upon written request within 30 days after contract termination.
4. Dispose of Licensee Data after 30 days upon contract termination.

Procedure

1. Nuventive staff will stop Licensee's front-end application service and remove Licensee's software. This will prevent access to the software site and in-turn remove access to the database.
2. Nuventive staff will keep Licensee's database on the production server, untouched for 30 days. The database is located and stored in a secure environment, protected by user name and password, and end-user white-listed IP address.
3. During these 30 days, Nuventive staff will continue to geo-replicate backups of the database. This is necessary in case of an unexpected catastrophic event.
4. At any point within the 30 days, upon written request by Licensee, Nuventive will export and provide a full database backup file – in the supported version of software Nuventive staff and Licensee deem appropriate - to Licensee via FTPS or in a manner Licensee deems necessary or appropriate. At the request of the Licensee, Nuventive staff can delete Licensee Data from Nuventive's Network and make aforementioned database file available for the remainder of the specified time frame. Once Nuventive makes the database file available to Licensee, it is the responsibility of the Licensee to restore the database and access the data locally.

5. After the 30th day, assuming that Nuventive has not received contrary instructions in writing from the Licensee, Nuventive staff will delete the Licensee's database and backups from Nuventive's Network.

Responsibilities

Nuventive Responsibilities. Nuventive is responsible for implementing processes and procedures to meet the requirements set forth in this policy. After contract termination, Nuventive shall not maintain Licensee's data beyond the 30-day period (except for a reasonable administrative period in which to effect the deletion of data), or for any different period of time as specified in Licensee's contract. Nuventive shall, upon request within the specified time frame, provide a backup file to the Licensee.

Licensee responsibilities. Licensee is responsible for requesting data within the specified time frame, restoring database backup file, and accessing data provided by Nuventive locally.

Definitions

"Licensee Data": means data provided by Licensee and/or the Users for use in connection with the Software Services or the Professional Services.

"Users": means individuals who are authorized by Licensee to use the Software Products, and who have been supplied user identification and passwords by Licensee (or by Nuventive at Licensee's request). With respect to any Software Services provided by Nuventive in the form of an individual User subscription, Users shall include those individuals, affiliated with Licensee, for whom subscriptions to the Software Services have been purchased, either by such individuals or by Licensee.

"Nuventive's Network": means the hosting environment provided by Nuventive or its Third-Party Providers to host and provide access to the Software Services.

Non-Compliance

Failure to abide by this policy may result in disciplinary action in accordance with Nuventive policy.

SIGNED:  Gary Choban – Security Officer

Date of Policy Version: _____ September 12, 2019