Nuventive™

Addendum attached hereto and incorporated herein for all purposes.

TCM Contract # 2021-334

NUVENTIVE
SOFTWARE AND PROFESSIONAL SERVICES AGREEMENT

This Software and Professional Services Agreement ("**Agreement**"), effective as of **July 19,** 2021 (the "**Effective Date**"), is entered into by and between Nuventive, LLC, a Delaware limited liability company located at 9800B McKnight Road, Suite 255, Pittsburgh, PA 15237 ("**Nuventive**"), and the entity identified in the Order Form attached to this Agreement as Exhibit A ("**Licensee**"). Nuventive and its Third-Party Providers have developed Software and Software Services (defined below) for use by Licensee and authorized users ("**Users**"). Software or Software Services made available to Licensee or its Users by Nuventive under this Agreement ("**Software Products**") 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   **"Confidential Information"** means all information or material of a party that, from all relevant circumstances, reasonably should be assumed to be confidential and proprietary. Each party's Confidential Information shall remain the exclusive property of that party. Confidential Information of Nuventive includes, but is not limited to, the Software Products, Professional Services, Documentation in all forms, and the terms and conditions of this Agreement (including pricing and the terms of Order Forms and Work Orders). Confidential Information does not include information or material that: (a) is or becomes generally known to the public by any means other than a breach of the receiving party's obligations; (b) was previously known to the receiving party or rightly received by the receiving party from a third party; (c) is independently developed by the receiving party; (d) is 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 (e) must be disclosed or made public under any applicable law, or any requirements of any applicable government authority.

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

   1.3   **"Intellectual Property Rights"** means all rights to any inventions (whether or not patentable), works of authorship, moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, and all other subject matter protected under intellectual property laws.

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

   1.5   **"Material Defect"** means any reported reproducible error or other defect in a Software Product that constitutes a substantial nonconformity with the Documentation for the Software Product.

   1.6   **"Order Form"** means Exhibit A attached hereto and other Order Forms entered into with Licensee under this Agreement. All Order Forms are incorporated into this Agreement.

   1.7   **"Personal Data"** means any personally identifiable information relating to any Users of the Software Products or other individuals that is transferred to or stored on Nuventive's network in connection with this Agreement.

   1.8   **"Professional Services" or "Services"** means services provided by Nuventive and/or Third-Party Providers under this Agreement, an Order Form or Work Order.

   1.9   **"Software"** means the object code version of any software Nuventive makes available to Licensee for its use directly or through any Software Services.

   1.10   **"Software Services"** means hosted application services provided by Nuventive or Third-Party Providers under an Order Form or other agreement with Licensee.

   1.11   **"Third-Party Provider"** means any third-party supplier or service provider that provides or assists Nuventive with Services, or in providing other products or services.

   1.12   **"Third-Party Software"** means non-embedded products and program code provided by third parties for use by Licensee with the Software Products. Nuventive makes no warranties or representations regarding Third-Party Software. Licensee may be required to enter into separate agreements with third-parties licensing these products or services.

   1.13   **"Work Order"** means a statement of work executed by the parties referencing this Agreement, generally in the form attached as Exhibit B.

2.   **LIMITED LICENSE**.

   2.1   **Provision of License**. Nuventive grants to Licensee, for the term stated in the Order Form (the "**Term**"), a limited, nontransferable, nonexclusive right to use the Software Products, subject to this Agreement, the Documentation and any service description. The Software Products are licensed to Licensee, not sold. Licensee shall use the Software Products only in the form provided by Nuventive, and for Licensee's internal use. Unless otherwise provided in the Order Form, all Software will be hosted by Nuventive's third party service provider(s).

   2.2   **Enhancement; Feedback**. Nuventive may upgrade, enhance, or modify the Software Products ("**Enhancements**"). Enhancements that add functionality or features to the Software Products may be provided at an additional Fee. Enhancements that are generally made available to licensees without charge will be made available to Licensee without charge. Enhancements will be subject to the terms of this Agreement and will be deemed part of the applicable Software Product.

   2.3   **No Access to Third Parties**. Licensee shall not rent, sell, assign, lease, sublicense, transfer, or encumber any of the Software Products or otherwise allow any third party (including,

without limitation, any third-party vendor or outsourced service provider) to access or use the Software Products, other than as permitted by the Documentation. Third-party vendors or outsourced service providers engaged by Licensee may access or use Software installed on-premises at Licensee's location for the sole purpose of providing Licensee with system support and maintenance, subject to such third parties being bound by confidentiality restrictions that are at least as restrictive as the confidentiality restrictions imposed on Licensee and Users under this Agreement.

2.4 **Return of Licensee Data**. With respect to Licensee Data held in a hosted environment provided by Nuventive, upon expiration or termination of the Term, data provided by Licensee and/or the Users to Nuventive's hosted environment, as applicable, such hosted Licensee Data may be downloaded by Licensee for a period of thirty (30) days. After such 30-day period, Nuventive may, unless legally prohibited, delete all such Licensee Data. It is Licensee's responsibility to backup or archive Licensee Data in a manner that Licensee deems appropriate.

2.5 **Hosting, On-Premises Access and Use, and Related Limitations**. Unless provided otherwise in an applicable Order Form, Nuventive Software Programs will be hosted as part of the Software Services. If an Order Form identifies any Software Programs that will be delivered or made available to Licensee for on-premises access or use on Licensee's system, then Licensee, in addition to the other limitations set forth in this Section 2: (a) shall not copy or distribute such Software except to the extent copying is necessary to use the Software for purposes set forth in this Agreement or the Order Form; (b) may make a single copy of such Software for backup and archival purposes; (c) shall not install such Software at any additional location(s); and (d) will return or destroy all copies of the Software (including modifications or derivative works thereof), the Documentation and any Nuventive Confidential Information if the license for the Software terminates at any time for any reason. If Licensee has a license for on-premises Software installed on Licensee's system, Licensee may elect, by notice to Nuventive, to convert such license to a Software Services license with access to the licensed Software through an off-premises platform hosted by Nuventive and/or its Third-Party Provider(s). If Licensee makes such election and is in compliance with its duties and obligations under this Agreement and any applicable Order Form, Nuventive will provide the Software to Licensee as part of the Software Services, subject to Licensee's payment of the applicable hosting and subscription Fees, and further subject to the acceptance by Licensee and its Users of the service description terms and any applicable "click-through" agreement necessary to access and use such Software Services.

3. **RESPONSIBILITIES OF THE PARTIES.**

3.1 **Nuventive Responsibility**. Nuventive shall provide the Software Products and support and maintenance or other Services, as set forth in the applicable Order Form.

3.2 **Licensee Responsibility**.

3.2.1 <u>Use Restrictions</u>. Licensee and its

representatives shall not attempt to modify, customize, copy or misappropriate any feature of the Software Products or attempt to derive the source code, source files or structure of any portion of the Software Products by any form of reverse engineering, disassembly or decompilation, except to the extent permitted by law. The Software Products are not specifically developed or licensed for use in any nuclear, aviation, mass transit or medical application or in any other inherently dangerous application. Licensee and its Users may not access or use the Software Products in any manner that: (a) is likely to be perceived as obscene or indecent (outside of academic discourse), or is abusive, threatening or harassing to another person; (b) violates any rights of others or infringes any Intellectual Property Rights; (c) libels, defames or slanders any person, or violates any person's privacy rights; (d) contains any computer virus, malware, or harmful component; (e) allows any third party to access or use the Software Products, except as permitted by the Documentation; (f) adversely affects the performance or availability of Nuventive's network; (g) impairs the operation of the Software Products; (h) violates any applicable local, state, national or foreign law, regulations, rules, court orders or governmental requirements ("**Applicable Law**"); (i) involves sending unsolicited advertising or promotional materials such as "spam" or bulk email; or (j) violates any agreement Licensee has with any person or entity. Licensee and its Users shall use the Software Products in accordance with all applicable privacy laws and regulations, and shall ensure that all necessary consents have been obtained in accordance with such laws and regulations in order to transfer or disclose any Personal Data to third parties or to Nuventive, its affiliates, contractors, agents, successors and/or assigns.

3.2.2 <u>Licensee Responsible for Equipment and Connectivity</u>. All costs of providing Third-Party Software, and equipment and connectivity necessary for Licensee or its Users to access the internet and the Software Services, shall be the sole responsibility of Licensee or the applicable Users. It is the responsibility of Licensee to acquire and maintain any Third-Party Software (unless acquired by Licensee from Nuventive), computer system or equipment, and connectivity in accordance with the Documentation that is sufficient for purposes of running Software delivered to Licensee for on-premises access and use through its own systems, as applicable.

3.2.3 <u>Responsibility for Licensee Data</u>. Licensee is responsible for: (a) the accuracy and reliability of Licensee Data; (b) obtaining rights it needs to receive, store or use Licensee Data; (c) reviewing and evaluating output from its use of the Software Products; (d) preventing unauthorized access to the Software Products; and (e) complying with Applicable Law. Licensee will provide any technical data, access to facilities, and other relevant information and assistance reasonably required by Nuventive for performance of the Services.

3.3 **Intellectual Property Rights; Use Guidelines**.

3.3.1 <u>Intellectual Property Rights</u>. As between Licensee and Nuventive, Nuventive is the sole owner of the Software Products, any modifications thereof, and any work product

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provided by Nuventive to Licensee ("**Deliverables**"), including all related Intellectual Property Rights; provided, however, such ownership excludes Licensee's content and branding elements embedded therein. Licensee grants to Nuventive a worldwide, nonexclusive, nontransferable limited license to use Licensee branding elements, content, information or materials as needed to perform the Services and its other obligations under this Agreement, and for no other purpose. All rights not granted to Licensee in this Agreement are expressly reserved to Nuventive.

3.3.2   Limited Rights Granted to Nuventive. Licensee grants to Nuventive, its employees and contractors the right to use or share Licensee Data: (a) to perform its obligations under this Agreement, system maintenance and other management or audit functions; (b) when reasonably necessary to identify, contact or bring legal action against any person who may interfere with Nuventive's or a third party's rights or property; (c) when required by Applicable Law or when such Licensee Data is or may be used for an unlawful purpose; (d) as permitted under Nuventive's privacy policy(ies); and (e) with an acquirer of Nuventive's business relating to any Software Product(s) subject to the acquirer being bound by the terms of this Agreement.

3.4   **Service Bureau Activities.** Licensee shall not (a) act as a service bureau or as an outsource agent of the Software Products; or (b) use the Software Products for the benefit of any other educational institution or students, staff or faculty not directly affiliated with Licensee.

3.5   **Use of Documentation**. Licensee may reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with its use of the Software Products.

3.6   **Third-Party Providers.** Nuventive may use Third-Party Providers to offer products or assist in providing services, in conjunction with the Software Products through an application programming interface or other processes. The terms of this Agreement, including warranty disclaimers and liability disclaimers, inure to the benefit of such Third-Party Providers. NUVENTIVE IS NOT AN AGENT OF ANY THIRD-PARTY PROVIDER, AND NUVENTIVE MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THIRD-PARTY PROVIDER OR ANY PRODUCT OR SERVICE OF ANY THIRD-PARTY PROVIDER, whether or not such products or services are designated by Nuventive as compatible, "certified," "validated" or otherwise.

3.7   **Export Controls.** Licensee acknowledges that the export, import, and use of certain software and technological data provided under this Agreement is regulated by the United States and other governments and agrees to comply with the U.S. Export Administration Act, the regulations promulgated thereunder, and any other Applicable Laws, such as those that prohibit the Software Products from being used in or accessed by a national of Cuba, Iran, North Korea, Sudan, Syria or any other sanctioned or embargoed country.

4.   **FEES.**

4.1   **General.** Fees payable by Licensee ("**Fees**") are payable 30 days after invoice date. Fees for subscription to the Software Services are billed in advance. Fees for Professional Services are billed on a time and materials basis or a fixed price basis, and are payable as set forth in the applicable Work Order. Unless a Work Order specifies a fixed price, Fee estimates for Services are estimates only, and Nuventive will invoice Licensee for actual time spent and expenses incurred. Delinquent payments are subject to late charges equal to the lesser of 1.5% per month of the overdue amount or the maximum amount permitted under Applicable Law. Licensee will reimburse Nuventive for collection costs (including, but not limited to, reasonable attorney fees and costs).

4.2   **Taxes.** Unless Nuventive is provided with a valid tax exemption certificate, Licensee is responsible for all applicable taxes and duties that are levied or imposed by reason of products or services licensed or purchased under this Agreement, excluding Nuventive's income taxes.

4.3   **Adjustments.** Nuventive may adjust Fees and license terms if Licensee exceeds the scope of its existing license or elects to add capacity or features. Licensee shall notify Nuventive if Licensee merges with, is acquired by, or acquires another entity, which changes the number of Users or scope of use of any Software Product.

5.   **RELATIONSHIP.** Licensee and Nuventive shall be independent contractors (and neither party shall act as an agent or representative of the other party).

6.   **CONFIDENTIALITY.**

6.1   **Treatment of Confidential Information.** Each party agrees that: (a) except as otherwise provided under Applicable Law, it will hold all Confidential Information it obtains from the other party in strict confidence and permit use of such Confidential Information solely as permitted under this Agreement; and (b) it may disclose the disclosing party's Confidential Information only to the receiving party's employees, contractors and agents as necessary to perform its obligations under this Agreement.

6.2   **Equitable Remedy.** In the event of a breach or threatened breach of a party's obligations under this Section 6, the non-breaching party will be entitled, in addition to other remedies available, to appropriate equitable relief, without the necessity of posting bond or other security.

6.3   **Security and Data Breach.**

6.3.1   Data Center Security. All Licensee Data stored or at rest in any data centers hosting the Software Services, or in transport, will be encrypted and will not be transferred (except with Licensee's prior consent) outside the United States. Nuventive will implement reasonable security standards, but in no event less than industry standards, to protect the security of data stored in data centers provided by Nuventive or its Third-Party Providers.

6.3.2   Data Safeguards. Nuventive agrees that it

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will access and use Licensee Data solely to perform its obligations in this Agreement and as permitted by this Agreement. Nuventive will maintain appropriate physical, technical, and administrative safeguards to protect the security of Licensee Data in its possession or under its control.

6.3.3   Data Breach. If Nuventive becomes aware of a data breach regarding any Licensee Data in Nuventive's possession or control, Nuventive shall: (a) promptly notify Licensee in writing; (b) cooperate with Licensee to mitigate such data breach; and (c) comply with Applicable Law.

6.3.4   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. Licensee hereby consents to the use, processing and/or disclosure of Personal Data only to the extent necessary for Nuventive in performance of this Agreement, or as required by law.

7.   **LIST OF AUTHORIZED USERS**. Permitted authorized Users are Licensee's employees and others who are directly affiliated with Licensee, subject to Nuventive's approval of such affiliation. Licensee will provide a written list of authorized Users to Nuventive on request. Users are not permitted to share log-in information with any third party. Licensee is responsible for all use of the Software Services by its Users. Licensee will immediately notify Nuventive if Licensee becomes aware of any loss or theft of any log-in information or any unauthorized access to the Software Services.

8.   **NUVENTIVE WARRANTIES**. Nuventive warrants that: (a) it has full power and authority to enter into and perform this Agreement; (b) with respect to Software that may be provided or made available by Nuventive under this Agreement for on-premises access and use through Licensee's systems, for a period of ninety (90) days following the initial delivery or installation of any previously uninstalled Software, such newly installed 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); (c) with respect to any Software Products that are hosted in a remote environment as part of a subscription for Software Services, such hosted Software Products shall perform substantially in accordance with the Documentation; and (d) it will perform the Professional Services in a professional and workmanlike manner, in accordance with generally prevailing industry standards. Nuventive's sole liability under the foregoing warranties shall be for Nuventive to correct or replace any Material Defect of the applicable Software Product or re-perform the deficient Services within a reasonable time. If Nuventive is unable to do so, then Licensee may terminate the license for such Software Product containing any Material Defect and upon such termination Nuventive will refund any pre-paid Fees relating to such terminated subscription, or Nuventive will refund the Fees paid for any Software containing Material Defects that is delivered by Nuventive to Licensee for on-premises installation on Licensee's system, as applicable. If Nuventive is not able to re-perform deficient Services to correct such deficiency,

Nuventive will refund the amount paid by Licensee for such deficient Services. The above warranties do not apply to any deficiency caused by malfunction of hardware or software not provided by Nuventive, malfunction of any Third-Party Provider platform or hosting environment, modification of any Software not performed or authorized by Nuventive, operator error, or use of the Software Product not in accordance with the Documentation or operating instructions provided by Nuventive.

9.   **LICENSEE WARRANTIES**. Licensee ~~warrants~~ agrees that: (a) it has full power and authority to enter into and perform this Agreement; (b) any Licensee Data or other information provided by Licensee does not infringe the Intellectual Property Rights or other rights of any person; and (c) it will use the Software Products and Professional Services in compliance with Applicable Law.

10.   **DISCLAIMER OF WARRANTIES**. EXCEPT AS PROVIDED IN SECTION 8, THE SOFTWARE PRODUCTS, SERVICES AND ANY DELIVERABLES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. NUVENTIVE AND ITS SUBSIDIARIES, AFFILIATES, VENDORS, LICENSORS, AND CONTRACTORS (COLLECTIVELY, THE "DISCLAIMING PARTIES") DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, 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 AND THAT THE SOFTWARE PRODUCTS AND PROFESSIONAL SERVICES ARE ERROR-FREE. ANY USE OF THE SOFTWARE PRODUCTS OR PROFESSIONAL SERVICES IS AT LICENSEE'S SOLE RISK. EXCEPT AS SET FORTH IN THIS AGREEMENT, 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. LICENSEE AGREES THE SOFTWARE PRODUCTS AND PROFESSIONAL SERVICES ARE NOT INTENDED TO REPLACE LICENSEE'S PROFESSIONAL SKILL AND JUDGMENT. LICENSEE ACKNOWLEDGES AND AGREES THAT THE DISCLAIMING PARTIES DO NOT OPERATE OR CONTROL THE INTERNET AND THAT VIRUSES, WORMS, TROJAN HORSES OR OTHER UNDESIRABLE DATA OR SOFTWARE AND 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 LIABLE FOR SUCH ACTIVITIES, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISCLAIMING PARTIES.

11.   **INDEMNIFICATION BY NUVENTIVE**. Nuventive shall defend, indemnify and hold Licensee harmless against any damages awarded against Licensee by a court of competent jurisdiction in connection with a third-party claim that alleges Licensee's use of a Software Product or Deliverable in accordance with this Agreement infringes the Intellectual Property Rights of such third party. The foregoing indemnification shall not apply to any claim arising from: (a) Licensee's use of the Software Product in violation of or outside the scope of this Agreement; (b) Licensee's use of a superseded

or modified (other than by Nuventive) version of the Software Product; (c) the combination, operation or use of the Software Product with any unauthorized third-party software, hardware or other materials; or (d) Nuventive's compliance with any instructions, designs or specifications provided by Licensee. Licensee's right to indemnification is subject to Licensee providing Nuventive: (i) prompt written notice of the claim; (ii) sole control of the defense and settlement of the claim (subject to Licensee's consent to any settlement, not to be unreasonably withheld); and (iii) all reasonable assistance with respect to the defense of such claim.

12. **SUSPENSION OF SERVICES AND REMOVAL OF CONTENT**. Nuventive may suspend any license, subscription or performance of Services, or reject any Licensee Data: (a) to prevent damages to or interference with Nuventive's products, services or network; (b) to comply with Applicable Law; (c) to protect Nuventive from potential legal liability; or (d) if an undisputed invoice remains unpaid for 45 or more days from its due date.

13. **LIMITATION OF LIABILITY.** 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, INCLUDING USE OF THE SOFTWARE PRODUCTS OR PROFESSIONAL SERVICES, EVEN IF THE DISCLAIMING PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF THE DISCLAIMING PARTIES TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR ANY USE OF THE SOFTWARE PRODUCTS OR 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 THIS AGREEMENT FAIL IN THEIR ESSENTIAL PURPOSE.

14. **TERM**. The Term of this Agreement will continue for the Term specified in Exhibit A, unless earlier terminated in accordance with this Agreement. Work Orders will extend until Services are completed, or until earlier termination in accordance with the terms thereof. If any Work Order is terminated prior to completion, Licensee will be responsible for all charges and expenses incurred through the effective date of termination.

15. **TERMINATION**. This Agreement will terminate 30 days after either party gives the other party written notice of a material breach of this Agreement or any other agreement between Nuventive and Licensee, which breach is not cured (if curable) within such 30 day period. Upon termination for any reason other than Nuventive's material breach, Licensee will not be entitled to any refund except as otherwise provided in the applicable Order Form or by law.

16. **GENERAL PROVISIONS.**

16.1 **Assignment**. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the non-assigning party. Any attempt by a party to assign such rights or obligations shall be void. Notwithstanding the foregoing, Nuventive may assign this Agreement to any entity succeeding to all or substantially all of the business or assets of any Nuventive line of business by a merger or other similar transaction, or by the sale or acquisition of assets; provided that if the assignee is objected to by Licensee, Licensee, for a period of 30 days after being notified of such assignment or prospective assignment, will have the right to terminate this Agreement by notice to Nuventive. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

16.2 **Force Majeure**. Except for the payment of Fees, neither party shall be liable for any failure or delay in performance under this Agreement that is due to any event beyond the reasonable control of such party including, without limitation, fire, explosion, unavailability of utilities, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, pandemic, export control regulation, laws, judgments or government requirements.

16.3 **Governing Law**. The interpretation and enforcement of this Agreement shall be governed by the law of the State of Texas without reference to its choice of law rules.

16.4 **Counterparts**. This Agreement may be executed in any number of identical counterparts.

16.5 **Notices**. Any notices or other communications between the parties ("**Communications**") may be provided electronically or through one of the other delivery methods identified in this Section. Electronic Communications may be delivered to any email address provided by the parties for such purpose. Except for notices relating to any allegation of default, suspension or termination under this Agreement, Communications from Nuventive may be posted on the pages within Nuventive's website. Communications hereunder shall be deemed effective when delivered as provided above, or by hand, by facsimile transmission, or upon receipt when mailed by registered or certified mail (return receipt requested), postage prepaid. Notices to Nuventive shall be addressed to the attention of Nuventive's Chief Executive Officer. Notices to Licensee shall be addressed to Licensee's signatory of this Agreement unless otherwise designated in any Order Form or Work Order. Any party may change the address at which it receives notices by giving written notice to the other party.

16.6 **Survival.** The following sections of this Agreement shall survive termination or expiration of this Agreement: 2.2 through 2.5; 3.2 through 3.7; 4; 6 through 13; 15; and 16.3 through 16.7.

16.7 **Other Provisions.** This Agreement and any applicable Exhibit, Order Form and/or Work Order, all of which are incorporated by reference, constitute the entire agreement between the parties with regard to its subject matter. No other agreements, representations, or warranties have been made by
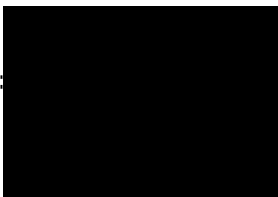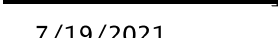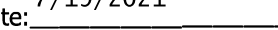
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either party to the other except as referenced herein. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Except for any Exhibit, Order Form, Licensee's Addenda or Nuventive service description entered into by the parties or provided by Nuventive at the time of entry into this Agreement as agreed upon by the parties in writing, no terms or conditions stated in a contract, purchase order or in any other order documentation, notwithstanding any language to the contrary

therein, 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. Waiver of any provision in one instance shall not preclude enforcement on future occasions. Headings are for reference purposes only and have no substantive effect. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form or Work Order, the terms of such Order Form or Work Order shall prevail.

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: _____

Na _____

Tit _____

Date: 7/19/2021 _____

University of North Texas at Dallas:

By (Sign)

Name (Pr

Title:

Date: 7/19/2021 _____

6

Nuventive™

Exhibit A

Nuventive Software:	Nuventive Improvement Platform Essential Edition
Licensee:	**University of North Texas at Dallas**
Designated Contacts:	████████████████████████
Contract Term:	Three Years
License Type:	Subscription Service License for Software Component
Subscription/Software:	Nuventive Improvement Platform Essential Edition

Included with the core Software:

Nuventive Improve Analytics for the Nuventive Improvement Platform Essential Edition – see: Improve Analytics Document

Nuventive Connect – LMS – see: Connect LMS Document

Managed Services will provide ongoing Software Configuration & Support Services for Nuventive Improvement Platform Essential Edition – see: Managed Services Document

Annual Subscription Fees: **$23,640.00**

Special Terms: Upon the expiration of this initial three-year commitment, this Agreement for Nuventive Software (Nuventive Improvement Platform Essential Edition) shall ~~automatically~~ renew for consecutive additional one-year terms unless either party provides written notification to the contrary at least ninety (90) 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.

SUPPORT AND MAINTENANCE

Support. NUVENTIVE, at its sole option, at any time, may modify the Software Products, issue new versions of the Software Products, or establish rules relating to use of the Software Products, 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 Products. NUVENTIVE will provide on-going Support Services to Licensee's Designated Users until the earlier of: (a) the termination or expiration of this Agreement; or (b) such time as Licensee notifies NUVENTIVE that it is no longer authorizing Users to use the Software Products. Support services shall include: (i) diagnosis and response to Material Defects via telephone or email; and (ii) providing telephone and email support and providing qualified personnel to aid in the diagnosis and response to Material Defects. With respect to NUVENTIVE Software installed on-premises at Licensee's location, Support Services do not include, as applicable: (A) visits to Licensee's site; (B) work with or relating to any third-party equipment or software; (C) configuration, setup or installation of NUVENTIVE Software; (D) training or consultation with Users; (E) Professional Services associated with the implementation, installation, configuration or customization of the 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. 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.-6 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.

Nuventive™

How to Reach Us		
Worldwide Web:	https://www.nuventive.com
Email:	support@nuventive.com
Technical Support:	877-427-4768
Fax:	412-847-0285

Specifications and Requirements: Nuventive Improvement Platform Essential Edition

Nuventive Platform™ Requirements: The Nuventive Platform is 100% cloud-based SaaS (Software as a Service), running completely in Microsoft Azure. No local server, or end user installation required. Licensee shall be responsible for procuring, at its expense, the necessary Microsoft Azure AD account subscription and can work with Nuventive Support to configure the authentication process of users from Azure Active Directory, or an Identity Provider (IDP) that supports SAML2.
Clients may use a Microsoft Windows based operating system or Apple OSX. Clients must be running Google Chrome, Microsoft Edge, Mozilla Firefox, or Safari. 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™

EXHIBIT B

WORK ORDER

1. Administration	
Customer:	University of North Texas at Dallas
Address:	7300 University Hills Blvd., Dallas, TX 75241
Customer Contact:	███████████████████████████
Customer Phone:	
Customer Email:	████████████████████
Customer Purchase Order Number:	
Nuventive Professional Services Contact:	████████████████████████████
Nuventive Sales Contact:	

2. Work
Nuventive Professional Category:
Implementation Services for Nuventive Improvement Platform Essential Edition (one-time fee)   **$10,000.00** Implementation Services
Managed Services to provide ongoing Configuration & Support of Nuventive Improvement Platform Essential Edition INCLUDED, SEE: Managed Services Document
Additional Professional Services or Training will be $220/hour, subject to annual adjustment
TOTAL :   **$10,000.00**

3. Work Details
Location(s) where the Services will be rendered: *Remote*

4. Additional Terms & Conditions
Travel & expenses, if any, related to the on-premises delivery of professional services or training will be billed at actual expense incurred.

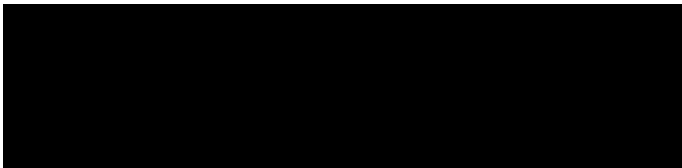| 5.   *Acceptance by authorized Customer representative* |
|---|
| ### *University of North Texas at Dallas* – *PLEASE SIGN* |

Print Name of Authorized Representative: ████████████████████████

Authorized Representative Job Title:

Authorized Representative Signature:

└─ 3C2006F3D4FD41D...

Date: 7/19/2021

STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System ("UNTS") and the University of North Texas at Dallas ("UNTD") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNTD; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNTD is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNTD. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTD that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Dallas County, Texas, and venue for any suit filed against UNTD shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNTD's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNTD shall issue written notice to Vendor that UNTD may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Delivery. Delivery shall be FOB Destination.

Insurance. UNTD, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNTD shall, without further requirement, satisfy all insurance obligations of UNTD under the Agreement.

Public Information. UNTD shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTD in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNTD records retention requirements; (2) to promptly provide contracting information to UNTD when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNTD or to preserve all contracting information according to UNTD's records retention requirements.
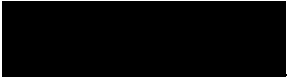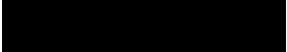
Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNTD is required by Texas Gov't Code Section 2261.253 to post each contract it enters into for the purchase of goods or services from a private vendor on its internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. UNTD is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNTD property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNTD, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

SIGNATURE PAGE TO FOLLOW

NUVENTIVE LLC

By:

Name:

Title:

Date: 7/19/2021

UNIVERSITY OF NORTH TEXAS AT DALLAS

By:

Title:

Date: 7/19/2021

Declaration of Procurement Method

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.