

**21437**

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 508  
County of Cook and State of Illinois

**ADOPTED**  
BOARD OF TRUSTEES OF  
COMMUNITY COLLEGE DISTRICT NO. 508

**AUG 5 - 1999**

**COUNTY OF COOK  
AND STATE OF ILLINOIS**

**RENEW NOVANET SERVICES AGREEMENT  
ALL COLLEGES**

**THE CHANCELLOR**

**REPORTS**

that since 1971 the Board of Trustees has approved agreements with the University of Illinois and later NovaNET Learning, Inc. [formerly University Communications Inc.] for the operation of the NovaNET Program, a computerized learning system which provides academic support for City Colleges of Chicago students;

that a renewal agreement for FY2000 has been negotiated with NovaNET Learning, Inc. [the sole supplier of NovaNET services], for the provision of NovaNET services for 300 concurrent users for the period July 1, 1999, through June 30, 2000, at a cost of \$252,000.00.

**THE CHANCELLOR**

**RECOMMENDS**

that the Board of Trustees approves the renewal agreement with NovaNET Learning Inc., Tucson, Arizona, for the continuation of NovaNET services during the period of July 1, 1999 to June 30, 2000, at a cost of \$252,000.00; and that the Chairman and Assistant Secretary be authorized to execute said Agreement on behalf of the Board.

Respectfully submitted,

Wayne D. Watson  
Chancellor

August 5, 1999

**novaNET®****RENEWAL ORDER SCHEDULE****NLI:**

NovaNET Learning, Inc.  
3450 E. Sunrise Drive, Suite 140  
Tucson, AZ 85718  
(520) 615-7600

**CUSTOMER:**

City Colleges of Chicago  
Academic Support Services, Room 1310  
226 W Jackson Blvd  
Chicago, IL 60606-6998

**START DATE:**

7/1/99

**TERM:**

Annual

**SITE INFORMATION****LICENSED SITE(S):**

IL0011.00 : City Colleges of Chicago - Central - 300 connections

**BILLING INFORMATION****ANNUAL FEE:**

\$252,000.00

**CONTRACT AMOUNT:**

\$252,000.00

**PAYMENT PLAN:**

Quarterly @ \$63,000.00

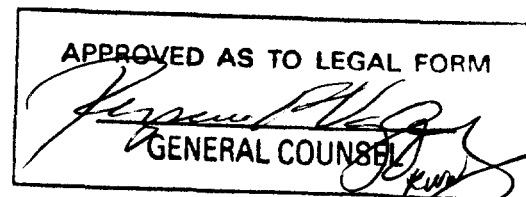
**RENEWAL TRAINING:**

See attached for training package descriptions

- One day @ \$950
- Two consecutive days @ \$1,750
- Two 2-day sessions @ \$3,250

The above information summarizes the NovaNET pricing information to extend NovaNET for an additional TERM beginning on the START DATE subject to the attached Renewal Terms and Conditions. In order to continue to receive NovaNET, please forward a purchase order for the amount indicated below, plus any additional amounts for requested training to:

Linette McJunkin  
Contracts Administrator  
NovaNET Learning, Inc.  
3450 E. Sunrise Drive, Suite 140  
Tucson, AZ 85718  
Fax: (520) 615-7601



Purchase Order Amount: \$252,000.00

*If Renewal Training was selected, please add the appropriate amount to Purchase Order(s).*

Purchase Order #: \_\_\_\_\_

BOARD OF TRUSTEES OF  
COMMUNITY COLLEGE DISTRICT NO. 508  
COUNTY OF COOK AND STATE OF ILLINOIS  
226 WEST JACKSON BLVD.  
CHICAGO, ILLINOIS 60606

AUG 5 - 1999

*James A. Dyson*  
VICE CHAIRMAN OF THE BOARD  
*Patricia A. Busch*  
ASSISTANT BOARD SECRETARY

**PLEASE UPDATE OUR RECORDS:**

NovaNET SERVICES COORDINATOR:

Penny Schaefer

ADDRESS:

Director, Academia Support ServicesCity Colleges of Chicago226 W. JacksonChicago, IL 60606

TELEPHONE NUMBER:

(312) 553-2761

BILLING CONTACT:

Accounts Payable

P.O. NUMBER:

BILLING ADDRESS:

City Colleges of Chicago226 W. JacksonChicago, IL 60606

TELEPHONE NUMBER:

(312) 553-2820

SPECIAL BILLING INSTRUCTIONS:

**PLEASE ADDRESS ALL CORRESPONDENCE TO:**

NovaNET Learning, Inc.  
3450 East Sunrise Drive, Suite 140  
Tucson, AZ 85718  
(800) 937-6682

These Renewal Terms and Conditions ("Agreement") are entered into between NovaNET Learning, Inc. ("NLI") and the customer identified on the Order Schedule ("Customer").

## 1. DEFINITIONS.

1.1 **Annual Fee** shall mean the annual fee payable by Customer to NLI for the license of the Licensed Product and the support services provided by NLI as described herein. Seventy percent (70%) of the Annual Fee consists of NLI's license fee for the Licensed Product and thirty percent (30%) of the Annual Fee consists of NLI's charges for support services.

1.2 **Curricular Content** shall mean all instructional programs, lessons, or other content made available to users of the System.

1.3 **Documentation** shall mean all user manuals, training materials or other information ancillary to the use of the System (other than Software), whether in electronic, printed or other format, provided to Customer by NLI.

1.4 **Licensed Product** shall mean NLI's NovaNET product, consisting of Curricular Content, Documentation and Software.

1.5 **Order Schedule** shall mean the schedule hereto specifying sites, connections, fees and other particulars related to the license granted hereunder.

1.6 **Software** shall mean all computer programs or other electronically readable product used to access or utilize the System, and all modifications thereto, provided to Customer by NLI.

1.7 **System** shall mean the system maintained by NLI through which Curricular Content is made available to Customer as specified herein.

2. **LICENSE GRANT.** Subject to the terms and conditions set forth herein, NLI grants to Customer a restricted, personal, non-exclusive, non-transferable license to use the Licensed Product for the term specified in Section 8. The Licensed Product shall be used only as expressly authorized herein.

3. **RESTRICTIONS ON USE.** The Licensed Product is protected by trade secret and/or copyright law and is proprietary to NLI and/or its licensor(s). Title to all complete or partial copies, together with all applicable rights to copyrights, patents and trade secrets in the Licensed Product, are and shall remain the property of NLI or its licensor(s). Curricular Content shall be accessed only by students or authorized personnel of Customer, through no more than the number of connections set forth on the Order Schedule. Software shall be installed only as necessary to permit access to Curricular Content through such computers. Documentation shall be used solely for the purpose of facilitating use of the Licensed Product as permitted herein. Customer shall maintain the confidentiality of the Licensed Product, and, except as expressly provided herein, Customer shall not, and shall not allow any other person or entity to, reproduce, copy, repost, distribute, download or otherwise transfer to any other system or media any portion of any Licensed Product without the written consent of NLI and the owner of the copyright with respect to such Licensed Product; provided, however, that Customer may make copies of Documentation and Software as necessary for internal use. Any reproduction or use of NLI's name, trademarks or logos, whether in connection with a reproduction of any Licensed Product or otherwise, must be approved by NLI in writing prior to such reproduction or use. Customer shall not, and shall not allow others to, reverse engineer any Software. Upon request, Customer shall provide NLI with access to Customer's applicable records and computer systems to enable NLI to audit Customer's compliance with the provisions hereof. Breach of this provision could result in irreparable injury to NLI. Accordingly, NLI shall have the right to secure equitable relief against any actual or threatened breach of this provision, without proving actual damages.

4. **PAYMENT TERMS.** The Annual Fee and all other charges provided for in this Agreement or in the Order Schedule shall be due and payable according to NLI's invoice terms. Customer agrees to pay to NLI all such fees and charges, and all applicable sales, use or other taxes, however designated, except for taxes based on NLI's income. Customer shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. Customer shall provide NLI with proof of any claimed tax exemption, and shall be responsible for the payment of all applicable penalties, taxes and costs which arise if the tax exemption proves inapplicable. All fees and other amounts paid hereunder are non-refundable.

5. **SUPPORT SERVICES.** During the term hereof, (i) NLI shall make available to Customer any upgrades, enhancements and/or additions to the Curricular Content and the Software, (ii) Customer shall have access to customer support for the Licensed Product via NLI's on-line utilities and a toll-free number on an "as needed" basis, and (iii) NLI shall maintain Customer's connection to the System as specified in Section 6.1. If requested by Customer, NLI shall provide on-site training at mutually agreed upon times at the rates set forth in the Order Schedule. NLI shall provide on-site technical support as mutually agreed upon by Customer and NLI. NLI reserves the right to charge Customer at its then-current labor and materials rates for such on-site support.

## 6. HARDWARE AND PREMISES.

6.1 NLI shall provide and maintain certain communications equipment and any necessary data circuits required to permit access to the System from each site set forth on the Order Schedule. All NLI-supplied equipment shall remain the property of NLI.

6.2 **CUSTOMER.** Customer shall be responsible for the provision of System-compatible personal computers for use in accessing the System, for maintaining all necessary connections from such computers to the hardware and equipment installed by NLI to provide access to the System, and for otherwise maintaining an operating environment compatible with NLI's hardware and equipment so that the System may be accessed through same. Specifications relating to the foregoing are available upon request.

7. **SYSTEM CONTENT AND AVAILABILITY.** Customer acknowledges and agrees that NLI may, from time to time and in its sole discretion, (i) add new content to the System, or (ii) limit, modify or discontinue any existing content made available on the System. In the latter event, NLI shall use its best efforts to provide prior notice to Customer. The System shall generally be available during the following hours (hereinafter, "Prime Time") or as otherwise announced: 0700 to 2300 Central Time Monday through Friday; 0800 through 1800 Central Time Saturday; and 1400 through 1600 Central Time Sunday. While the System may also be available other than during Prime Time, Customer acknowledges that NLI may take the System down to perform maintenance and/or upgrades.

## 8. TERM AND TERMINATION.

8.1 **Renewal.** The renewal term shall be for one (1) year, unless another term is specified on the Order Schedule. Upon expiration of such renewal term or any subsequent renewal term, the term of Customer's license shall automatically renew for one (1) year, unless either party notifies the other in writing of non-renewal at least thirty (30) days prior to the end of the then-current term. Fees for each renewal term shall be at NLI's then-current rates.

8.2 **Termination by NLI.** If Customer is in breach of any of its obligations hereunder, NLI shall have the right to suspend performance under or terminate Customer's license of the Licensed Product and all other rights hereunder immediately upon written notice, and exercise any and all of its right and remedies existing at law or in equity. Customer shall pay all expenses of such enforcement including reasonable attorneys' fees. Sections 4, 8, 10, 11, 12 and Customer's obligations of confidentiality with respect to the Licensed Product shall survive the termination hereof.

8.3 **Return of Licensed Product.** Immediately upon termination of this license for any reason, Customer shall, at its own expense, return to NLI (or, at NLI's direction, otherwise dispose of) all hardware or other equipment owned by NLI and all copies of the Licensed Product that are in Customer's possession or control. If Customer fails to comply with the foregoing within ten (10) days after the date of termination, NLI shall have the right, to the extent permitted by law, to enter on Customer's premises to remove or repossess all such hardware, equipment, and copies of the Licensed Product.

9. **LIMITED WARRANTY.** During the term of this Agreement, NLI shall attempt to correct any material defect in any hardware or equipment installed by NLI pursuant to Section 6, or any material failure of any Software to conform substantially to the applicable description and specifications contained in the Documentation delivered with same (collectively, "Errors") that precludes access to the System after receiving written notification of such Error from Customer. If NLI is unable to correct the Error after a reasonable opportunity, NLI shall reimburse Customer for a prorated portion of the support fees paid to NLI hereunder, computed from the date of Customer's notice as described above through the scheduled expiration date of the current license term, and Customer's license to use the Licensed Product shall terminate. The foregoing remedy shall not apply to Errors resulting from Customer's negligence, abuse or failure to meet its responsibilities under Section 6.2 ("Customer-caused Errors"). Customer shall reimburse NLI at NLI's then-current rates for any repair or replacement costs and expenses incurred by NLI in remedying any Customer-caused Errors. In addition, NLI shall extend the term hereof by one day for each day that the System is unavailable for four or more continuous hours during Prime Time due to the actions or negligence of NLI. Such credit shall not be available for downtime caused by natural phenomena, data line failure, or other causes beyond NLI's control. The foregoing states the complete and entire remedies that Customer has under this warranty. NLI shall have no responsibility for any warranty claims made outside of the warranty period.

10. **DISCLAIMER OF OTHER WARRANTIES. THE WARRANTY SET OUT IN SECTION 9 ABOVE CONSTITUTES AND EXPRESSES THE ENTIRE STATEMENT OF NLI AS TO WARRANTIES FOR THE LICENSED PRODUCT, SERVICES AND OTHER ITEMS PROVIDED HEREUNDER. NLI AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

11. **LIMITATION OF LIABILITY. NLI AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST BUSINESS, LOST SAVINGS OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT, THE LICENSED PRODUCT, SERVICES OR OTHER ITEMS PROVIDED HEREUNDER, OR THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF NLI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO EVENT WILL THE LIABILITY OF NLI AND ITS LICENSORS FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE FEE OR PRICE PAID FOR THE LICENSED PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED.**

12. **GENERAL. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.** These Renewal Terms and Conditions, along with any Order Schedule, constitute the complete agreement between Customer and NLI, and supersede all prior discussions, understandings, arrangements and negotiations between the parties with respect to the subject matter hereof. Any additional or variant terms and conditions submitted by Customer, in a purchase order or otherwise, with respect to the Licensed Product or any support or other services shall be of no effect. This agreement cannot be changed without the written agreement of both parties. Neither party will be liable for failure of performance when such failure is beyond its reasonable control (for instance, caused by acts of God, civil disturbance, or labor disputes). No action, regardless of form, may be brought by Customer more than one year after the cause of action has arisen.