



Novanta Corporation or its Affiliates Shrink-wrap License and Warranty Agreement (Embedded Products)

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF THIS NOVANTA SHRINK-WRAP LICENSE AND WARRANTY AGREEMENT (“AGREEMENT”) BEFORE USING THE PRODUCTS WHICH ARE ENCLOSED OR OTHERWISE ASSOCIATED WITH THIS AGREEMENT. USE OF THE PRODUCTS MEANS THAT YOU ARE BINDING YOU AND THE COMPANY YOU REPRESENT TO THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU ARE NOT AUTHORIZED TO USE OR OPERATE THE PRODUCTS AND YOU SHOULD PROMPTLY RETURN THE PRODUCTS, ENCLOSURES AND ALL PACKAGING.

The following terms govern use of the Products unless there is a separate signed agreement between you and Novanta, in which case the terms and conditions of such agreement will prevail.

1. **INTELLECTUAL PROPERTY RIGHTS.** Any and all intellectual property rights in and to the Products shall remain in Novanta Corporation or its affiliates (“Novanta”) or its licensors. The Firmware is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Firmware is licensed, not sold. Your use of any service accessible using the Firmware is not covered by this Agreement and may be governed by separate terms of use, conditions or notices.
2. **GRANT OF LICENSE.** Subject to compliance with the terms of this Agreement and payment of the applicable fees, Novanta hereby grants you a limited, revocable, non-exclusive, non-transferable license to (i) use the Products for your internal testing and evaluation purposes, (ii) integrate the Products into your products to the limited extent necessary to create the Bundled Products, and (iii) distribute and sell the Products only when embedded in Bundled Products and not on a standalone basis. In addition, Novanta grants you a nonexclusive, nontransferable license to sell and distribute Bundled Products indirectly, through your authorized Distribution Partners, but only when sold and distributed as an integrated Bundled Product. This License grants you the following rights:
 - a. **Firmware.** You may use, access, display, run, or otherwise interact with (“Run”) the Firmware in connection with operating the Products. The primary user of the Products may make a second copy of the Firmware for his or her exclusive use for backup purposes.
 - b. **Storage/Network Use.** You may also store or install a copy of the Firmware on a storage device, such as a network server, used only to Run the Firmware on your other Products over an internal network; however, you must acquire and dedicate a license for each separate Product on which the Firmware is Run from the storage device. A license for the Firmware may not be shared or used concurrently on different Products.
 - c. **Reservation of Rights.** All rights not expressly granted are reserved by Novanta.

3. RESTRICTIONS.

- a. **End Users.** You will provide the Firmware to End Users (including through Distribution Partners) only on or in conjunction with the Product with which it was originally delivered (and then, only as and in the form in which it was originally delivered), and, in no event shall you provide such Firmware to End Users on a stand-alone basis. You further agree that any such Firmware shall be provided to End Users only pursuant to a written license agreement (“End User Agreement”) containing provisions that provide Novanta with rights, defenses and protections with respect to the Firmware that are at least equivalent (under the laws of each jurisdiction where the Bundled Products are distributed pursuant to this Agreement) to the rights, defenses and protections provided to Novanta under this Agreement, including without limitation those relating to intellectual property ownership, restrictions, and disclaimers and limitations of warranty and liability.
- b. **Copyright Notices:** You must maintain all copyright and other proprietary notices on all copies of the Firmware.
- c. **Limitations on Modification:** You may not copy, modify, adapt, or translate the Firmware, or create derivative works based on the Firmware.
- d. **Limitations on Reverse Engineering, Decompilation and Disassembly:** You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that such activity is permitted by applicable law notwithstanding this limitation.
- e. **Assignment:** You may not transfer or assign this Agreement (by operation of law or otherwise) without the advance, written approval of Novanta which approval may be withheld for any reason, and any such assignment, transfer or delegation without such approval shall be void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

4. CERTIFICATION REQUIREMENTS; COMPLIANCE WITH LAWS; EXPORT

- a. **Regulatory Certification.** You will, at your own expense, ensure that the Bundled Products meet or exceed all regulatory or other certification requirements under all relevant laws and regulations in effect during the term of this Agreement.
- b. **Compliance with Laws; Export Requirements.** You agree that you shall comply with all applicable federal, state and local laws, regulations, and export requirements in connection with your performance under this Agreement. Regardless of any disclosure made by you to Novanta of an ultimate destination of the Products acquired from Novanta and, notwithstanding anything contained in this Agreement to the contrary, you will not modify, export, or re-export, either directly or indirectly, any Products, or portions thereof, without first obtaining any and all necessary licenses from the United States government or agencies thereof or any other country that requires an export license or other governmental approval at the time of modification, export, or re-export.

5. **SUPPORT SERVICES:**

- a. **Support.** You shall provide Level I and Level II support to your Distribution Partners and End Users. Subject to payment of the applicable support fees, Novanta will provide you with Level III Support, by telephone, email or via Novanta's JADAK business unit website at www.jadaktech.com. Novanta may refuse to provide support if you have not elected to distribute either the currently shipping version or the preceding version of the Products, and you shall be fully responsible for support in such circumstances.
 - b. Maintenance Releases are provided to you free of charge. If you are current with the applicable maintenance and support fees, you will receive New Releases. You have sole responsibility for distributing any such Maintenance Releases or New Releases to End Users (including through Distribution Partners).
6. **TERMINATION:** Without prejudice to any other rights, Novanta may terminate this Agreement if you fail to comply with the terms and conditions of this Agreement. The provisions of this Agreement, other than your license to use the Firmware, shall survive the termination of this Agreement. Upon termination, your right to use the Products shall cease. Depending on your location, there may be rules or regulations regarding the disposal of the Products. Please contact Novanta for further information.
7. **U. S. GOVERNMENT RESTRICTED RIGHTS:** Distribution and use of the Products and derivative works thereof to and by the United States Government will be subject to the RESTRICTED RIGHTS as set forth in the Federal Acquisitions Regulations Systems (FAR) at 48 CFR 252.7015, as amended from time to time. Any licensed Firmware described or referenced in this Agreement is a commercial computer software program developed at private expense. Use, duplication or disclosure by the Government is subject to restrictions as set forth in FAR 48 CFR 52.227-19(c) where applicable or the applicable provisions of the DOD FAR 48 CFR 227.7202-3, as amended from time-to-time.
8. **LIMITED WARRANTY:** Subject to the conditions in the following paragraph, Novanta warrants for a period of twelve (12) months from the date of original shipment the Products will be free from defects in material and workmanship and will operate in substantial conformance with applicable specifications and drawings set forth in the Documentation. If the Products fail to meet this warranty, Novanta (at its sole option) will either repair or replace the nonconforming Product with new, equivalent to new, or reconditioned parts or Product. If neither of those can be done on a commercially reasonable basis, Novanta may, at its sole option, pay you an amount based on depreciation of the Product over a three (3) year useful life. In the event of repair pursuant to the foregoing warranty, the validity of the foregoing warranty will be twelve (12) months from the date of shipment of the repaired Product less the period of time between the date of original shipment and the date on which Novanta received return of the Product for repair. The foregoing is your sole and exclusive remedy if a Product fails to meet the limited warranty above.

9. **WARRANTY CONDITIONS:** In order for the warranty to apply, you must first obtain a written return authorization from Novanta by contacting Novanta using one of the following methods: (a) by mail to Novanta Corporation, 125 Middlesex Turnpike, Bedford, MA 01730 USA; (b) by telephone to 1-866-833-4069 or, for international calls, to +1-617-499-4090; or (c) by email to rfid-support@jadaktech.com. Returned Products must be shipped, transportation prepaid, by the most practical method of shipment. This warranty shall not apply to any custom work performed by Novanta. Any expenses incurred in the making of a claim under this warranty will be borne by you. This warranty shall also not apply to defects or substantial non-conformance with the Specifications which result from: (1) improper installation, use, storage, care or maintenance by the buyer; (2) wear resulting from normal use of parts subject to wear; (3) modification, alteration, or combination with another product; (4) use with products (including supplies) or software not furnished by Novanta; or (5) accident, neglect, misuse or abuse or where the trademark has been defaced or obliterated. Unauthorized modification or alteration of Products shall invalidate this warranty. Novanta shall return all Products repaired or replaced under warranty freight prepaid to you.
10. **DISCLAIMER OF WARRANTIES:** EXCEPT FOR THE LIMITED WARRANTY ABOVE, NOVANTA AND ITS SUPPLIERS PROVIDE THE PRODUCTS “AS IS” AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, AND LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, OR NONINFRINGEMENT FOR THE PRODUCTS. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS IS WITH YOU. NOVANTA DOES NOT WARRANT THAT THE OPERATION OF THE FIRMWARE WILL BE UNINTERRUPTED OR ERROR FREE.
11. **NOTICE TO AUSTRALIAN PURCHASERS, AUSTRALIAN CONSUMER WARRANTY LAW:** Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Novanta's warranty, as set out in this Agreement, is in addition to any mandatory rights and remedies that you may have under the *Australian Consumer Law*.

12. **LIABILITY DISCLAIMER:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NOVANTA OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF NOVANTA OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES SHALL BE EFFECTIVE EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
13. **INDEMNITY.** You agree to indemnify, defend and hold harmless Novanta and its directors, shareholders, officers, subsidiaries, affiliates, agents, employees, successors and assigns from any and all third party claims, suits, proceedings, judgments, damages, and costs (including reasonable attorneys' fees and expenses) (collectively, "Claims") arising from, in connection with or related in any way to, directly or indirectly, (i) your material breach of this Agreement, or (ii) any alleged infringement of any third party's patent, copyright or trade secret by the Bundled Product, provided that Novanta gives you prompt notice of any actual or threatened Claims, (iii) gives you sole control of the defense or settlement of such claims, and (iv) cooperates fully with you and your counsel in the defense or settlement thereof, so long as you pay Novanta's reasonable out of pocket costs.
14. **MISCELLANEOUS**
- a. **Governing Law.** If you purchased the Products from Novanta Corporation then this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and applicable United States federal law, without reference to "conflicts of laws" provisions or principles and jurisdiction and venue of any dispute or court action arising from or related to this Agreement or the Software shall lie exclusively in or be transferred to the courts of the County of Suffolk, Massachusetts, and/or the United States District Court for the District of Massachusetts. You hereby consent and agree not to contest, such jurisdiction, venue and governing law. If you purchased the Products from Novanta Europe BV then this Agreement will be governed by and construed in accordance with the laws of the Netherlands, without reference to "conflicts of laws" provisions or principles and this Agreement irrevocably attorns to the jurisdiction of the courts of The Netherlands and further agrees to commence any litigation that may arise under this Agreement in the courts of The Hague, The Netherlands. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement.
- b. **Independent Contractors.** You are an independent contractor and nothing contained herein will be deemed or construed to create a joint venture, franchise, partnership, agency or similar relationship between Novanta and you.

- c. **Severability.** All terms and provisions of this Agreement are severable. Any term or provision of this Agreement or any application thereof which may be invalid or unenforceable shall be ineffective only to the extent of such prohibitions or unenforceability without affecting the remainder of this Agreement or any other application of such term or provision.
 - d. **Modifications.** This Agreement may be modified only by a written instrument duly executed by an authorized officer of the party affected by such modification. No condition, usage of trade, course of dealing or performance, understanding or agreement purporting to amend, modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound.
 - e. **Waiver.** No delay or failure by either party to detect, protest or remedy the failure of the other party to perform any obligation under this Agreement will constitute a waiver of such party's rights. No waiver of any provision of this Agreement or of any rights or obligations of either party hereunder will be effective unless in writing and signed by an authorized officer of the waiving party.
 - f. **Official Language.** THE OFFICIAL LANGUAGE OF THIS SHRINKWRAP LICENSE AND WARRANTY AGREEMENT IS ENGLISH. IN THE EVENT OF A CONFLICT BETWEEN ENGLISH AND OTHER LANGUAGE VERSIONS, THE ENGLISH LANGUAGE SHALL CONTROL.
15. **DEFINITIONS.**
- a. **Bundled Product** means the combination of the Product(s) and your products as an integrated system. Such system must add value to the Products, such that the Bundled Product does not merely consist of a repackaged Product.
 - b. **Distribution Partners** original equipment manufacturers, system houses, distributors, dealers, and other third parties who acquire Bundled Products from you for further sale, rental or lease.
 - c. **Documentation** means any written information provided by Novanta pertaining to the Products including but not limited to user manuals, technical documentation, and training guides, whether in paper or electronic format.
 - d. **End User** shall mean those parties who use the Bundled Products for internal purposes as opposed to distribution or resale purposes.
 - e. **Errors** mean incorrect code in the Firmware or an incorrect statement or diagram in the Documentation that produces results not in conformity with the specifications for the Product.
 - f. **Firmware** is the machine readable (object code) version of computer programs developed or marketed by Novanta and related Documentation. Firmware includes all Maintenance Releases, or other modifications, enhancements, versions, releases, bug fixes and work-arounds.

- g. **Level I Support** means front-line support including: ongoing maintenance and monitoring; ensuring that the device is properly installed, powered and connected; configuring RF-related and networking-related parameters; verification of network connectivity; field replacement of defective units; or providing on-site assistance to second-level and third-level support staff, as needed.
- h. **Level II Support** means second-level support including: debugging common operational problems; analyzing and addressing performance issues; supporting customer application development; debugging customer applications; providing advice on antenna configuration and positioning; or training and advising first-level technical support
- i. **Level III Support** means engineering support including: diagnosing hardware and software defects; assisting your designated personnel in the diagnosis of complex issues; or supporting application development.
- j. **Maintenance Releases** means modifications or revisions specifically to correct Errors in the Products so that the Products meet the original Specifications.
- k. **New Releases** means modifications or revisions (other than Maintenance Releases) to the Product which provide new or enhanced functionality or features, or improved performance.
- l. **Products** shall mean any and all ThingMagic RFID and RFID-related embedded or module products, including the Firmware loaded on such products.
- m. **Specifications** means the applicable functional and technical performance parameters published in the Documentation.