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10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) SETTLEMENT AGREEMENT
14)
15 THE COMMISSIONER OF FINANCIAL)
16 PROTECTION AND INNOVATION,)
17 Complainant,)
18 v.)
19 NOVO PLATFORM INC.,)
20 Respondent.)
21)
22)

23
24 **I.**

25 **RECITALS**

26 A. The Commissioner of Financial Protection and Innovation (Commissioner) agrees to enter
27 into this Settlement Agreement (hereinafter referred to as the "Agreement") with Novo Platform
28 Inc. ("Novo"). Together, the Commissioner and Novo will be referred to as the "Parties".

1 B. Novo is a financial technology company that works with banking sponsors to provide
2 business-oriented banking products. Novo is incorporated in Delaware with headquarters in Miami,
3 Florida. Novo’s business model is predicated on partnering with certain banks (each a “Bank
4 Sponsor”) to provide innovative, fair and responsible financial products to businesses to improve
5 their financial wellbeing and assist them with their financial needs.

6 C. At all relevant times herein, Novo was not licensed to operate as a bank in California or in
7 any other jurisdiction, nor was it exempt from such licensure.

8 D. The Commissioner issues licenses and regulates state-chartered banks (Cal. Fin. Code §§
9 300, 560) in the state of California through the Department of Financial Protection and Innovation.
10 Any person engaged in the business of banking in California must be licensed by the Commissioner
11 unless exempt from licensure, or an agent of a person licensed. (Cal. Fin. Code § 563). Furthermore,
12 Cal. Fin. Code § 561 prohibits any person from transacting “business in a way or manner as to lead
13 the public to believe that its business is that of a bank” without actual authority to engage in such
14 business.

15 E. In 2021, the Commissioner commenced an inquiry of Novo for potential violations of Cal.
16 Fin. Code §§ 561 and 563 concerning Novo’s use of the term “bank,” or “banking” in the course of
17 Novo’s business.

18 F. As a result of the inquiry, the Commissioner finds:

- 19 1. That Novo’s use of the URL address of “banknovo.com” is in violation of Cal. Fin.
20 Code § 561 in California.
- 21 2. That Novo’s use of the email address “@banknovo.com” is in violation of Cal Fin.
22 Code § 561 in California.
- 23 3. That Novo’s usage of the words “bank” and “banking” in certain other aspects of
24 Novo’s business violated Cal. Fin. Code § 561 in California.

25 G. Novo has cooperated with the Commissioner’s inquiry and represents that it is committed to
26 working with regulatory agencies for the benefit of its customers and the public; and that this
27 Agreement reflects Novo’s willingness to work with regulatory agencies to ensure that its products
28 are transparently disclosed to its customers and the public. While neither admitting nor denying the

1 Commissioner’s findings, Novo agrees to comply to this Agreement as outlined below under “II.
2 TERMS AND CONDITIONS”.

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4 **II.**

5 **TERMS AND CONDITIONS**

6 1. Purpose. This Agreement resolves the issues before the Commissioner in a manner
7 that avoids the business disruption and expense of a hearing and other possible court proceedings,
8 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
9 provisions of the applicable law.

10 2. Order to Cease and Desist. The Commissioner hereby orders Novo and Novo
11 agrees that in accordance with Cal. Fin. Code §§ 561 and 563 in California, that Novo will cease
12 and desist from using the name “banknovo.com,” “@banknovo.com,” and similar names or
13 references in its business unless and until it becomes licensed or otherwise authorized to engage in
14 the business of banking under the laws of California, another state or of the United States. Novo
15 agrees that the Order to Cease and Desist is hereby deemed a final order.

16 3. Novo’s Review of its Webpage and Advertising. Novo agrees to perform the
17 following review and make enhancements to its webpage and advertising by March 15, 2022. The
18 Commissioner acknowledges and agrees that Novo will perform quality control and testing of such
19 enhancements by April 15, 2022 and promptly thereafter make further enhancements to address
20 any exceptions identified. Novo agrees as follows:

21 a. Novo shall distance itself from use of the term “banking” and derivatives by
22 clarifying statements on its website, on its mobile app, and in advertising to address
23 the following:

24 i. Where “banking” terminology is used, Novo shall place a disclosure stating
25 that Novo is not a bank and banking services are provided by its Bank
26 Sponsor(s). The disclosure shall be in bold and/or increased font size in a
27 clear and conspicuous manner proximate to the use of the banking
28 terminology.

ii. Novo shall enhance its internal review and approval process for when it
presents testimonials that may be perceived as representing Novo as a bank.

- 1 iii. Novo shall clarify or annotate in all testimonials it publishes, or causes to be
2 published, that use “banking” terminology that Novo is a financial
3 technology company not a bank and banking services are provided by
4 Novo’s Bank Sponsor(s). Further, Novo shall monitor affiliates and agents
5 who publish other testimonials and provide clarifying information that Novo
6 is not a bank in response to such testimonials that use “banking”
7 terminology.
 - 8 iv. Where appropriate, Novo shall revise website language to state that
9 customers can open an account “through” Novo, where existing language
10 states “Most Innovative Bank” or similar language.
 - 11 v. In paid Google search results, Novo shall place a statement on Google and
12 other ads that banking services are provided by its Bank Sponsor(s), which it
13 will identify by name.
 - 14 vi. Novo shall include in its website Frequently Asked Questions (FAQ), an
15 answer that clearly explains that the bank accounts are held at its Bank
16 Sponsor(s), which it will identify by name.
 - 17 vii. Novo shall provide a clear and prominent disclaimer during the account set
18 up process to inform the customer that Novo is a financial technology
19 company not a bank and banking services are provided by Novo’s Bank
20 Sponsor(s).
 - 21 b. Novo shall enhance its description of Novo’s role as technology, business processor,
22 and marketing service provider to its Bank Sponsor(s) and make clear that banking
23 products and services are provided by Novo’s Bank Sponsor(s). The description
24 shall be clear and conspicuous in the response to the “What is Novo?” question in
25 the company’s website FAQs.
 - 26 c. Compliance and Reporting. Novo shall establish, implement, enhance, and maintain
27 testing policies, procedures, and standards reasonably designed to, at a minimum,
28 ensure compliance with the provisions of this Agreement and with Cal. Fin. Code §
29 561. Furthermore, by May 15, 2022, and again one year after the effective date of
30 this Agreement, Novo shall submit to the Commissioner an accurate written
31 compliance progress report, which, at a minimum describes in detail the manner in
32 which Novo has complied with this Agreement.
- 33 4. Waiver of Hearing Rights. Novo hereby waives its right to any hearings, and to any
34 reconsideration, appeal, or other right to review which may be afforded pursuant to the California
35 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
36 law or any other rights to hearing, reconsideration, appeal, or other action in this matter. By

1 waiving such rights, Novo effectively consents to the Agreement becoming final and unappealable.
2 Nothing in this Agreement shall waive Novo’s right to defend itself in the event of a dispute about
3 compliance with its terms.

4 5. Full and Final Settlement. Novo hereby acknowledges and agrees that the
5 Agreement is intended to constitute a full, final, and complete resolution of Novo’s alleged
6 violations as set forth in the Recitals (Violations), and that no further proceedings or actions will be
7 brought by the Commissioner against Novo based on the alleged Violations, excepting any
8 proceeding to enforce compliance with the terms of this Agreement or if such proceeding is based
9 upon discovery of new and further violations of the law or regulation that do not form the basis for
10 the Agreement and which Novo knowingly concealed from the State.

11 6. Information Willfully Withheld. This Agreement may be revoked if the
12 Commissioner later finds out that Novo knowingly or willfully withheld information used and relied
13 upon in the Agreement.

14 7. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
15 the Agreement shall limit the Commissioner’s ability to assist any other agency (city, county, state,
16 or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency
17 against Novo or any other person based upon any of the activities alleged in this matter or otherwise.

18 8. Headings. The headings to the paragraphs of this Agreement are inserted for
19 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
20 the provisions hereof.

21 9. Binding. The Agreement is binding on all heirs, assigns, or successors in interest.

22 23 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
24 Agreement, he/she/it has relied solely on the statements set forth herein and the advice of their own
25 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Agreement
26 it has placed no reliance on any statement, representation, or promise of any other party, or any other
27 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
28 entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have
included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to

1 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
2 supplement, or contradict the terms of this Agreement.

3 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
5 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
6 waiver by each of the Parties of any breach of, or of compliance with, any condition or provision of
7 this Agreement by another party will be considered a waiver of any other condition or provision or
8 of the same condition or provision at another time.

9 12. Full Integration. This Agreement is the final written expression and the complete and
10 exclusive statement of all the agreements, conditions, promises, representations, and covenant
11 among the Parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the Parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 13. Governing Law. This Agreement will be governed by and construed in accordance
16 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
17 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
18 the maintenance of such action or proceeding in such court.

19 20 14. Counterparts. This Agreement may be executed in one or more separate counterparts,
21 each of which when so executed, shall be deemed an original. Such counterparts shall together
22 constitute a single document.

23 15. Effect Upon Future Proceedings. If Novo applies for any license, permit or
24 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future
25 action by such agency to enforce this Agreement, then the subject matter hereof shall be admissible
26 for the purpose of such application(s) or enforcement proceedings(s).

27 16. Voluntary Agreement. Novo enters into the Agreement voluntarily and without
28 coercion and acknowledges that no promises, threats, or assurances have been made by the State, or

1 any officer or agent thereof, about the Agreement other than as reflected herein.

2 17. Notice. Any notices required under the Agreement shall be provided to
3 each party at the following addresses:

4 If to Novo to: Parag Patel, Esq.
5 Orrick, Herrington & Sutcliffe LLP
6 Columbia Center
7 1152 15th Street, NW
8 Washington, DC 20005-1706
9 (202) 339-8400
10 ppatel@orrick.com

11 John P. Kromer, Esq.
12 Buckley LLP
13 2001 M Street, NW, Suite 500
14 Washington, DC 20036
15 (202) 349-8040
16 jkromer@buckleyfirm.com

17 If to Commissioner to: Paul Yee, Senior Counsel
18 Department of Financial Protection and Innovation
19 One Sansome Street, Suite 600
20 San Francisco, California 94104-4448
21 (415) 972-8544
22 Paul.Yee@dfpi.ca.gov

23 18. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
24 original signature, shall be deemed the same as an original signature.

25 19. Public Record. Novo acknowledges that this Agreement shall be a matter of public
26 record.

27 20. Effective Date. The Agreement shall become final and effective when signed by all
28 Parties and delivered by the Commissioner or his assigns to Novo's counsel of record via e-mail at:
patel@orrick.com.

21 21. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
22 capacity and authority to sign and enter into this Agreement and undertake the obligations set forth
23 herein.

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IN WITNESS WHEREOF, the Parties hereto have approved and executed the Agreement on the dates set forth opposite their respective signatures.

Dated: February 11, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: February 11, 2022

NOVO PLATFORM INC.

By _____

SAMUEL DAVIDSON
General Counsel