

Novus Insight

IT Master Services Terms and Conditions:

Last modified 6-4-19

**A. INTRODUCTION:**

1. **TERM:** This Agreement shall be effective upon the last date of execution and shall continue until either party provides notice of termination consistent with Section G.1.

2. **TASK ORDER:** A "Task Order" shall mean any additional document, including any proposals, executed by Novus and Client, referencing this contractual agreement with specific work detail pertaining to services or products to be provided by Novus. Any such Task Order(s) and all associated documents therein referenced are incorporated by reference into this Agreement. From time-to-time the parties may amend Task Orders or add additional Task Orders. Any additional services performed by Novus for the Client shall be governed by the terms of this Agreement. In the event of any conflict or inconsistency between a provision in this Agreement and the relevant Task Order, the provision in question of the relevant Task Order shall prevail.

3. **PAYMENT:** In consideration for the Services, the Client shall pay Novus in accordance with the terms indicated on the Task Order. Client agrees that payment is due even in the circumstance of pending technical support resolutions. In order to provide uninterrupted support, unless Novus's services are terminated, Task Orders shall automatically renew at the end of each term. Novus reserves the right to increase your fees effective as of the first day of any renewal term. Client will be informed of any price increase at least forty-five (45) days prior to the date of renewal.

**B. HOSTING TERMS OF SERVICE (where applicable):**

1. **NOVUS'S OBLIGATIONS.** Contingent on Novus's acceptance of your Task Order, and subject to these Terms of Service, Novus agrees to provide the Hosting Services ("Services"). Novus agrees to follow reasonable security procedures to secure its physical and virtual data environment.

2. **NOVUS HOSTING SERVICES.** Novus monitors 24 hours per day, 7 days a week, year round. You may request support by opening a support ticket via our ticketing system, or by calling your Novus service representative. Service initiated between the hours of 5 PM and 8 AM on weekdays, or at any time during weekends and U.S. Holidays may be subject to additional charges to you. Please see your Novus agreements for details on "off hours" support and assistance.

3. **MONITORING AND RESPONSE.** Novus will provide the following monitoring and response services:

- **Availability Monitoring.** Novus will monitor web and email server availability. Availability is tested every five (5) minutes via ping. Novus staff will be alerted if the test fails.

- **Fault Monitoring.** Novus monitors status events on web and mail servers and network devices including network availability and backup success/failure.

4. **UNAVAILABILITY.** Unavailability means the Novus internal network infrastructure is down.

Novus does not guarantee transport across the Connecticut Education Network or other data provider to access the Novus internal network.

5. YOUR OBLIGATIONS. You agree to do each of the following: (i) comply with applicable law and the Novus Acceptable Use Policy (AUP); (ii) pay when due the fees for the Services; (iii) use reasonable security precautions in light of your use of the Services, including encrypting any Personally Identifiable Information (“PII”) transmitted to or from, or stored on, the Novus Servers you use; (iv) cooperate with Novus’s reasonable investigation of outages, security problems, and any suspected breach of the Agreement; (v) keep your billing contact and other account information up to date; and (vi) immediately notify Novus of any unauthorized use of your account or any other breach of security. In the event of a dispute between us regarding the interpretation of applicable law or the AUP, Novus’s reasonable determination shall control.

6. SUSPENSION. We may suspend your Services without liability if: (i) we reasonably believe that the Services are being used (or have been or will be used) in violation of the Agreement; (ii) we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past; (iii) you don’t cooperate with our reasonable investigation of any suspected violation of the Agreement; (iv) we reasonably believe that your Services have been accessed or manipulated by a third party without your consent; (v) we reasonably believe that suspension of the Services is necessary to protect our network or our other customers; (vi) a payment for the Services is overdue; or (vii) suspension is required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless we determine, in our reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Novus or its other customers from imminent and significant operational or security risk. If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension.

## 7. ACCESS TO DATA.

7.1 You will not have access to your data stored on the Novus system during a suspension or following termination.

7.2 We backup the Novus systems on a periodic basis so that we are able to quickly restore the systems in the event of a failure. These backups are made on a snap-shot basis and, therefore, capture only the information that exists on the system at the time of the backup. In addition, we may destroy all but the most recent backup. These backups may not be available to you or, if available, may not be useful to you outside of the Novus systems unless otherwise specified by Novus.

7.3 Although Services may be used as a backup service, you agree that you will maintain at least one additional current copy of your programs and data stored on the Novus system somewhere other than on the Novus system unless otherwise agreed with Novus.

8. LICENSED SOFTWARE & LICENSE MOBILITY. In addition to the terms of our Agreement, your use of any licensed software is governed by the license owner’s license terms. If you make use of licensed software, then you represent and warrant that you have a written license agreement which permits you to use the software in conjunction with the Services provided by Novus. You agree that you will provide Novus with evidence of such licensing as Novus may reasonably require prior to the commencement of the Services, and from time to time as necessary to update the status of the license. If you fail to provide the required evidence of licensing Novus may, at its option, either (i) suspend the Services that were to include such software until the evidence is provided; (ii) provide

the Services in reliance on Novus's licensing agreement with the vendor and charge you its standard fee for the use of the software until such time as the required evidence is provided; or (iii) suspend or terminate this Agreement.

You must cooperate with Novus in the event that a software manufacturer requests Novus' participation in an audit of the software services. You agree that Novus can provide the manufacturer with (a) the number of Virtual Machine instances provided to you by Novus, and (b) a list of the software products which run in such Virtual Machine instances. If the software manufacturer determines that you are non-compliant with the program requirements for their program, then Novus may terminate this Agreement, the provision of any or all Services to you, or both.

9. WHO MAY USE THE SERVICE. You may resell the Services, but you are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. Unless otherwise agreed, Novus will provide support only to you, not to any other person you authorize to use the Services. There are no third party beneficiaries to the Agreement, meaning that third parties do not have any rights against either of us under the Agreement.

10. NO HIGH RISK USE. You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act.

11. IP ADDRESSES. Upon expiration or termination of the Agreement, you must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to you by Novus in connection with Services, including pointing the DNS for your domain name(s) away from Novus Services. You agree that Novus may, as it determines necessary, make modifications to DNS records and zones on Novus managed or operated DNS servers and services.

#### C. HOSTING ACCEPTABLE USE POLICY (AUP) (where applicable)

Your Services may be suspended or terminated for violation of this AUP in accordance with the Novus Hosting Terms of Service. Capitalized terms used in this AUP shall have the meaning given in the Terms of Service.

##### 1. ABUSE.

You may not use the Novus network or services to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including:

1. Use of an Internet account or computer without the owner's authorization;
2. Collecting or using email addresses, screen names, or other identifiers without the consent of the person identified (including, without limitation, phishing, Internet scamming, password robbery, spidering, and harvesting);
3. Collecting or using information without the consent of the owner of the information;

4. Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a Internet posting;

5. Use of the service to distribute software that covertly gathers information about a user or covertly transmits information about the user;

6. Use of the service for distribution of advertisement delivery software unless: (i) the user affirmatively consents to the download and installation of such software based on a clear and conspicuous notice of the nature of the software, and (ii) the software is easily removable by use of standard tools for such purpose included on major operating systems (such as Microsoft's "add/remove" tool), or any conduct that is likely to result in retaliation against the Novus network or website or the Novus Hosting's employees, officers, or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS).

## 2. EXCESSIVE USE OF SYSTEM RESOURCES

You may not use any shared system provided by Novus in a way that unnecessarily interferes with the normal operation of the shared system, or that consumes a disproportionate share of the resources of the system. For example, we may prohibit the automated or scripted use of Novus Mail Services if it has a negative impact on the mail system, or we may require you to repair coding abnormalities in your Hosting-hosted code if it unnecessarily conflicts with other Hosting customers' use of the Hosting. You agree that we may quarantine or delete any data stored on a shared system if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the system or other customers' data that is stored on the same system.

## 3. BULK OR COMMERCIAL E-MAIL

You may not use Novus services to relay bulk or commercial email except as it relates to routine communications used in conducting your business affairs unless otherwise agreed with Novus. Novus may test and otherwise monitor your compliance with its requirements. In addition, Novus may block email services that violate these provisions.

## 4. VULNERABILITY TESTING

You may not attempt to probe, scan, penetrate or test the vulnerability of a Novus system or network or to breach Novus' security or authentication measures, whether by passive or intrusive techniques, without Novus's express written consent.

## 5. OFFENSIVE CONTENT

You may not publish, transmit, or store on or via Novus's network and equipment any content or links to any content that Novus reasonably believes:

- Constitutes, depicts, fosters, promotes, or relates in any manner to child pornography, bestiality, or non-consensual sex acts;

- is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech;

- is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- is defamatory or violates a person's privacy;
- creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement;
- improperly exposes trade secrets or other confidential or proprietary information of another person;
- is intended to assist others in defeating technical copyright protections;
- infringes on another person's copyright, trade or service mark, patent, or other property right;
- promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking;
- is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to Novus; or
- is otherwise malicious, fraudulent, or may result in retaliation against Novus by offended viewers.

## 7. OTHER

- You must have valid and current information on file with your domain name registrar for any domain hosted on the Novus network.
- You may only use IP addresses assigned to you by Novus in connection with your Novus services.
- You agree that if Novus IP addresses assigned to your account are listed on an abuse database, like Spamhaus, you will be in violation of this AUP and Novus may take reasonable action to protect its IP addresses, including suspension and/or termination of your service, regardless of whether the IP addresses were listed as a result of your actions;
- You agree that we may quarantine or delete any data stored on a shared system if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the system or other customers' data that is stored on the same system.
- You agree that if you register a DNS record or zone on Novus managed or operated DNS servers or services for a domain of which you are not the registrant or administrative contact according to the registrars WHOIS system, that, upon request from the registrant or administrative contact according to the registrars WHOIS system, Novus may modify, transfer, or delete such records or zones.

## D. MAIL SERVICES (where applicable)

1. MANAGEMENT OF THE SERVICE. Novus will provision your initial mail environment, but you are otherwise responsible for managing your mail service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters unless otherwise specified via separate agreement with Novus.

2. FILTERING. Novus will not provide email filtering unless specified under separate agreement.

3. MAIL STORAGE LIMITATIONS. Mail that exceeds the storage limit when received may be permanently lost. An individual email message that exceeds the per-message size limit may also be permanently lost. The per-message size limit is set per client and may be provisioned up to 50 MB.

4. CONTENT PRIVACY. Your email messages and other items sent or received via the mail service will include: (i) the content of the communication (“content”), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the “message routing data”). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.) The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email. The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described in these Terms of Service. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

5. USAGE DATA. We collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

## E. INTERNET ACTIVITIES

### DISCLAIMER

Novus is in no way liable for use of any services or any activities, information or content delivered or transmitted over the Internet, whether or not created by you or done so at your direction. Furthermore, Novus disclaims all liability for the content or material included on your Internet site. By providing access to the Internet, Novus is in no way liable for controlling, facilitating, or providing, or failing to control, facilitate, or provide access to the Internet or another’s Internet site. Client agrees to indemnify Novus for all Internet activities including (as applicable) activities related to the design, development, or content of Client’s website, access to the Internet, or content transmitted across the Internet whether or not done by Client or at Client’s direction.

## F. STUDENT DATA PRIVACY

In general, it is Novus’ policy to not share or access any student information, student records, or student generated information with anyone for any reason.

### Contractor

(A) Should Novus enter into a written contract with any local or regional board of education where student information, student records, or student-generated content, as defined below, is accessed or shared, the provisions below are applicable:

(1) Any student information, student records, or student generated content are not the property of nor under the control of Novus.

(2) A local or regional board of education may request the deletion of student information, student records, or student generated content by submitting a written request through the help desk. Such request shall be addressed within 72 hours and an expected date of deletion provided to Client which shall be no more than 15 days after receipt of the written request.

(3) Novus shall not use student information, student records, and student-generated content for any purposes other than those authorized pursuant to the contract.

(4) A student, parent or legal guardian of a student must contact the designated local or regional board of education to review personally identifiable information contained in student information, student records, or student-generated content and correct erroneous information. The designated local or regional board of education may contact Novus via the help desk.

(5) Novus shall take actions to ensure the security and confidentiality of student information, student records, and student-generated content.

(6) If there has been an unauthorized release, disclosure, or acquisition of student information, student records, or student generated content, Novus will issue a written notification to the relevant board of education providing details of the breach and steps take to remedy the situation. To the extent possible, Novus will inform the board of education of the names of students affected.

Student Information (excluding directory information): Novus shall notify the local or regional board of education not more than thirty (30) days after the discovery, of such breach of security.

Directory Information: Novus shall notify the local or regional board of education not more than sixty (60) days after the discovery of such breach of security.

During such time Novus may elect to perform an internal investigation to determine the nature and scope of such unauthorized release and the identity of the students whose student information is involved or restore the reasonable integrity of Client's data system.

(7) Student information, student records, or student-generated content shall not be retained or available to Novus upon completion of the Agreement/relevant Task Order unless a student, parent, or legal guardian of a student chooses to establish or maintain an electronic account with Novus for the purpose of storing student-generated content.

(8) Novus shall comply with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time.

(9) The laws of the state of Connecticut shall govern the rights and duties of Novus and the local or regional board of education.

(10) If any provision of the contract or the application of the contract is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or application of the contract which can be given effect without the invalid provision or application.

(11) Novus has implemented and maintains security procedures and practices designed to protect student information, student records, and student-generated content from unauthorized access, destruction, use, modification, or disclosure. Novus shall take actions to ensure the security and confidentiality of student information consistent with state and federal requirements.

Operator

(B) Should Novus operate an Internet website, online service, or mobile application with actual knowledge that such Internet website, online service, or mobile application is used for school purposes and was designed and marketed for school purposes, to the extent Novus is engaged in the operation of such Internet website, online service, or mobile application and during the course of such operation collects, maintains or uses student information then

(1)Novus shall:

(i) Implement and maintain security procedures and practices that meet or exceed industry standards and that are designed to protect student information, student records, and student-generated content from unauthorized access, destruction, use, modification or disclosure; and (ii) Delete any student information, student records, or student-generated content within a reasonable amount of time if a student, parent, or legal guardian of a student or local or regional board of education who has the right to control such student information requests the deletion of such student information, student records, or student-generated content.

(2)Novus shall not knowingly:

(i) Engage in targeted advertising on Novus's Internet website, online service, or mobile application, or on any other Internet website, online service, or mobile application if such advertising is based on any student information, student records, student-generated content or persistent unique identifiers that the operator has acquired because of the use of Novus's website, online service, or mobile application for school purposes;

(ii) Collect, store, and use student information, student records, student-generated content or persistent unique identifiers for purposes other than the furtherance of school purposes and defined in the Agreement;

(iii) Sell, rent, or trade student information, student records, or student-generated content unless the sale is part of the purchase, merger, or acquisition of Novus by a successor provider and Novus and the successor provider continue to be subject to the provisions of this section regarding student information;

(iv) Disclose student information, student records, or student-generated content unless disclosure is made (a) in furtherance of school purposes of the Internet website, online service, or mobile application, provided the recipient of the student information uses such student information to improve the operability and functionality of the Internet website, online service, or mobile application and complies with this section (B), (b) to ensure compliance with federal or state law or regulations pursuant to a court order, (c) in response to a judicial order, (d) protect the safety or integrity of users or others or the security of the Internet website, online service, or mobile application, (e) to an entity hired by Novus to provide services for Novus's Internet website, online service, or mobile application, provided the operator contractually prohibits the entity from using student information, student records, or student-generated content for any purpose other than providing the contracted

service to, or on behalf of, Novus; prohibits the entity from disclosing student information, student records, or student generated content provided by Novus to subsequent third parties; and requires the entity to comply with this section (B); or (f) for a school purpose or other educational or employment purpose requested by a student or the parent or legal guardian of a student, provided such student information is not used or disclosed for any other purpose.

(3) Novus may use student information (i) to maintain, support, improve, evaluate, or diagnose Novus's Internet website, online service or mobile application; (ii) for adaptive learning purposes or customized student learning; (iii) to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party; or (iv) to respond to a request for information or feedback from a student, provided such response is not determined in whole or in part by payment or other consideration from third party.

(4) Novus may use de-identified information, information that has been altered to prevent the identification of an individual student, or aggregated student information (i) to develop or improve Novus's website, online service, or mobile application, or other Internet websites, online services or mobile applications owned by Novus, or (ii) to demonstrate or market the effectiveness of Novus's Internet website, online service or mobile application.

(5) Novus may share aggregated student information or de-identified student information for the improvement and development of Internet websites, online services, or mobile applications designed for school purposes.

(6) Upon discovery of a breach of security that results in the unauthorized release, disclosure, or acquisition of student information, student records, or student-generated content, Novus (if in possession of or maintaining student information, student records or student generated content as a result of a student's use of Novus' Internet website, online service, or mobile application) shall (i) notify, without unreasonable delay, but not more than thirty-days after such discovery, the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure, or acquisition of student information, excluding any directory information contained in such student information, of such student, and (ii) notify, without unreasonable delay, but not more than sixty days after such discovery, the student or the parents or guardians of such student of any breach of security that results in the unauthorized release, disclosure, or acquisition of directory information, student records or student-generated content of such student. During such thirty-day or sixty-day period Novus may (a) conduct an investigation to determine the nature and scope of such unauthorized release, disclosure, or acquisition, and the identity of the students whose student information, student records, or student-generated content are involved in such unauthorized release, disclosure, or acquisition, or (b) restore the reasonable integrity of the data system.

## G. GENERAL

### 1. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notice. This notwithstanding, Novus has the right, in its sole discretion, to immediately terminate services, without cause, should you fail to render payment.

### 2. INDEMNIFICATION

Client agrees to release, defend, indemnify, and hold harmless Novus and any of Novus' agents, employees, officers, or directors from all liabilities, claims, damages, costs, and expenses, including reasonable attorney's fees and expenses, relating to or arising out of this agreement, Novus services or Client's use of Novus' services including without limitation infringement or dilution by Client or someone else utilizing Client's Computer System, the improper provision of data, any Client supplied information, or failure of Client to comply with obligations. Client agrees to waive any and all rights to subrogation.

### 3. REMEDIES

CLIENT AGREES THAT NOVUS'S ENTIRE LIABILITY, AND CLIENT'S EXCLUSIVE REMEDY, IN LAW, IN EQUITY, OR OTHERWISE, WITH RESPECT TO ANY SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR FOR ANY BREACH OF THIS AGREEMENT IS SOLELY LIMITED TO THE AMOUNT THAT CLIENT PAID FOR SUCH SERVICES DURING THE TERM OF THIS AGREEMENT. IN NO EVENT SHALL NOVUS, ITS LICENSORS AND ASSIGNEES, BE LIABLE FOR ANY INDIRECT, INCIDENTAL SPECIAL, CONSEQUENTIAL DAMAGES EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT A STATE DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN NOVUS LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW IN SUCH STATES.

### 4. DISCLAIMER

CLIENT AGREES THAT USE OF NOVUS'S SERVICES IS SOLELY AT CLIENT'S OWN RISK. CLIENT AGREES THAT ALL OF SUCH SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NOVUS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NOVUS MAKES NO WARRANTIES THAT THE SERVICES PROVIDED HEREUNDER WILL MEET CLIENT'S REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. NOVUS FURTHER MAKES NO WARRANTY THAT THE RESULTS OBTAINED FROM THE SERVICES WILL MEET CLIENT'S NEED NOR ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH NOVUS'S SERVICES. CLIENT UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF NOVUS'S SERVICES IS DONE AT CLIENT'S SOLE DISCRETION AND RISK AND THAT CLIENT IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CLIENT'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NOVUS MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH ANY OF NOVUS'S SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH SUCH SERVICES. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY CLIENT FROM NOVUS OR THROUGH NOVUS SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN, CLIENT MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. TO THE EXTENT THAT JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY. NOVUS IS NOT RESPONSIBLE FOR AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY PRODUCTS AND/OR SERVICES PURCHASED BY CLIENT FROM A THIRD PARTY.

### 5. SECURITY

Client is solely responsible for the security, confidentiality, and integrity of all messages and the content received, transmitted through or stored on any email/web hosting or server hosting service. Client is solely responsible for any authorized or unauthorized access to Client's accounts by any person. Client agrees to bear all responsibility for the confidentiality of any passwords and all use or charges incurred from use of the Hosting Service with Client's password, external to Client's infrastructure and not within the scope of this Agreement.

## 6. PROTECTED MATERIAL

You may not use Novus's network or services to download, publish, distribute, or otherwise copy or use in any manner any text, music, software, art, image, or other work protected by copyright or trademark law or are otherwise considered proprietary or confidential material unless:

- you have been expressly authorized by the owner of the work to copy the work in that manner; or
- you are otherwise permitted by established law to copy the work in that manner. It is Novus's policy to terminate in appropriate circumstances the services of customers who are repeat infringers.

## 7. INTELLECTUAL PROPERTY OWNERSHIP

Novus shall retain all right, title, and interest in and to all Work Product produced in whole or in part by Novus during the course of this Agreement unless otherwise agreed to in the proposal. Work Product shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, works in progress, service deliverables, inventions, products, computer programs, computer or software applications, platforms, procedures, processes, improvements, developments, drawings, graphics, videos, notes, documents, business processes, information and materials made, regardless of form, conceived or developed by Novus which result from or relate to the services performed, including without limitation all associated intellectual property rights. Intellectual property rights include all patents, copyrights, mask works, trademarks, trade secrets, license rights, and other rights of a similar nature worldwide.

Further, Client agrees that Novus shall be prominently identified as the developer of the Work Product. Client agrees that Novus shall have exclusive rights in and for the Work Product.

Additionally, Client understands and agrees that Novus retains all right, title, and interest in any intellectual property developed prior to the effective date of the Agreement and utilized in the performance of the Agreement.

In any instance where Novus has agreed in writing in the Proposal to allow any intellectual property rights and title in the Work Product to vest with the Client, then Client is solely responsible for any and all costs associated with protecting the intellectual property, protecting and defending against infringement actions, and to prominently display any relevant disclaimers.

For any website developed by Novus and provided to Client, Client is responsible for inserting appropriate copyright protections and disclaimers. Novus shall be named as the developer prominently on all websites developed.

## 8. CONFIDENTIAL INFORMATION

Each Party acknowledges that confidential information or material of a commercial value ("Confidential Information"), including but not limited to product/service specifications, prototypes, computer files and programs, models, drawings, marketing plans, financial data, source code, trade secrets, copyrighted material, HIPPA protected information, and other information, whether in tangible or intangible form, pertaining to the business of a party, its employees, contractors, clients and/or business associates, has or will come into the possession or knowledge of each party in connection with this Agreement or the performance hereof. Each party further acknowledges that the Confidential Information represents confidential and proprietary trade secrets, whose disclosure to or use by third parties will be damaging to the owner thereof. Each party agrees to hold the other's Confidential Information in strictest confidence, not make use thereof other than for the performance of this Agreement, to release it only to those persons in their respective organizations requiring such information for the purposes of this Agreement, and not to release or disclose it to any third party without the other party's consent. These restrictions shall not be construed to apply to information a) generally available to the public; b) released by a disclosing party generally without restriction; c) independently developed or acquired by a party or its personnel without reliance in any way on Confidential Information of the other party; d) approved in writing for use and disclosure by the disclosing party, or its personnel, without restriction; or e) required to be disclosed by law or order of a court or other authority of competent jurisdiction, PROVIDED THAT the disclosing party provides the non-disclosing party notice of such required disclosure sufficiently in advance of the intended disclosure to permit the non-disclosing party to take action to prevent such disclosure if the non-disclosing party so deems necessary.

## 9. SOLICITATION OF EMPLOYEES

In consideration for the mutual promises contained herein, Client agrees not to solicit the services of or employ any of Novus' employees during the term of this Agreement and for a period of 12 months after the termination of this Agreement.

## 10. ARBITRATION OF DISPUTES

Any controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by binding arbitration administered in Hartford, Connecticut, or a mutually agreed suburb thereof, by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

## 11. ASSIGNMENT

Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by Client or Novus without the prior written consent of the other party.

## 12. FORCE MAJEURE

Novus shall not be liable for its delay or failure in performing under this Agreement due to conditions or events beyond Novus's reasonable control, including, without limitation, natural disasters, accidents, power outages, equipment failure, labor disputes or shortages, governmental laws, ordinances, rules and regulations, and inability to obtain material, equipment, or transportation. If due to any such condition or event, Novus is unable to supply the Services or Products ordered by Client and some or all of Novus' other clients, Novus shall have the right to allocate Services and Products among its clients in such manner as Novus in its sole discretion deems fair and equitable.

### 13. METHOD OF PERFORMING SERVICES

It is the express intention of the parties that Novus is an independent contractor and not an employee, agent, joint venture, or partner of the Client. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Novus and the Client or any employee or agent of Novus. Both parties acknowledge that Novus is not an employee for federal or state tax purposes. Novus shall retain the right to perform services for others during the term of this agreement.

Novus shall use Novus's own discretion in performing the tasks assigned, subject to the general direction of the Client and subject to the express condition that Novus shall at all times comply with applicable law.

### 14. PLACE OF WORK

The parties agree that the nature of some of the services to be performed by Novus will necessitate that the services be performed on Client's premises or at other locations designated by Client. Client therefore agrees to furnish space on such premises for use by Novus while performing these services.

### 15. LIMITATION OF AUTHORITY

This Agreement does not authorize Novus to execute any agreements, sign any checks, or bind Client in any manner, or make any changes or incur or assume any obligations, liabilities, or responsibilities of Client or to perform any other act in the name of, or on behalf of, Client other than in accordance with the terms and conditions contained herein.

### 16. GOVERNING LAW

This Agreement shall be interpreted under and governed by the laws of the State of Connecticut. The venue for resolution of any disputes under this Agreement shall be in Hartford County, Connecticut.

The Client and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations and orders of governmental authorities, including those having jurisdiction over its registration and licensing to perform services under this Agreement.