



# SaaS Terms

Last Updated:  
December 4, 2025

These Terms are provided as-is and cannot be altered. They are designed to apply uniformly to all customers, ensuring fairness and consistency across our services. If you do not accept these Terms or any portion of these Terms, then you must not access or use the Platform or any related Professional Services.



## Novi AMS SaaS Terms

These SaaS Terms (these “**Terms**”) govern the services designated on that Order Form (“**Order Form**”) by and between Novi AMS, LLC (“**Novi**”) and the Client named on the Order Form. These Terms and the Order Form collectively constitute this “**Agreement**” and is effective as of the date of execution of the Order Form by both Client and Novi (the “**Effective Date**”). Client accepts this Agreement by executing the Order Form, through use of the Platform (as defined below), or in the event of a change to these Terms, on the start of a Renewal Term (if any).

Novi may update these Terms from time to time, provided that the version of these Terms in effect at the time of execution of the Order Form will apply to Client and the Order Form without modification, for the balance of the then-current Term. For the avoidance of doubt, on the start of a Renewal Term (if any), the version of the Terms in effect at the time of such renewal will apply, and thus govern Client’s use of the Platform and any related Professional Services.

### **1. Provision of the Platform**

Upon execution of the Order Form by the parties and conditioned on Client’s timely payment of Fees (as defined below) and compliance with all other terms and conditions of this Agreement, Novi will use commercially reasonable efforts to make its proprietary association management platform, together with any related documentation (the “**Platform**”) available to Client on the terms and conditions of this Agreement.

a. Permitted Use. Client and the Client employees and agents authorized by Client to use the Platform pursuant to this Agreement (collectively, “**Authorized Users**”) may access and use the Platform solely to facilitate the administration of a single association (i.e., one association with its own employer identification number) operating on a single website domain that is owned, managed or operated by Client (“**Permitted Use**”). For the sake of clarity, subject to execution of a separate Novi order form, Client may obtain the right to access and use the Platform for additional related companies or website properties. Client and its Authorized Users will access and use the Platform solely in accordance with the conditions and limitations set forth in this Agreement and any Platform documentation. The authorization set forth in this paragraph is non-exclusive and non-transferable. Client will be solely and exclusively responsible for any breach by its “**Representatives**” which, for purposes of this Agreement, means Authorized Users and any other persons accessing the Platform directly or indirectly through Client, whether authorized, unauthorized or otherwise of this Agreement, or of any terms contained in any Platform documentation. Furthermore, as between Novi and Client, Novi will not be responsible or liable indirectly or directly, and Client will be solely and exclusively responsible and liable directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with Representatives.

b. Prohibited Conduct. Further limiting the scope of the Permitted Use, Client will not, and will not permit others to: (i) make the Platform (in whole or in part) available to anyone other than Client or its Authorized Users for the sole purpose of the Permitted Use; (ii) sell, resell, license, sublicense, distribute, rent or lease the Platform (in whole or in part); (iii) use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, including privacy rights; (iv) use the Platform to store or transmit code, files, scripts, agents or programs



intended to do harm, including, for example (but not by way of limitation), viruses, worms, time bombs and Trojan horses ("**Malicious Code**"); (v) interfere with or disrupt the integrity or performance of the Platform (in whole or in part), including, without limitation, by making calls through any Platform-integrated APIs that exceed limits established by Novi or its Third Party Service Providers (as defined below) on the number and frequency of such calls, or take any action that imposes an unreasonable or disproportionately heavy load on the same or on the Platform generally or in part, or that negatively affects the ability of others to access or use the same or the Platform generally or in part; (vi) attempt to gain unauthorized access to the Platform or its related systems or networks or access or use the Platform other than by an Authorized User through the use of his or her own then valid Access Credentials (as defined below) or bypass any security safeguards or exploit any security vulnerabilities within the Platform; (vii) permit direct or indirect access to or use of any Platform in a way that circumvents a contractual usage limit (as described in Section 1(g)); (viii) copy, modify or create derivative works or improvements of the Platform or any part, feature, function or user interface thereof; (ix) submit queries through any Platform-integrated APIs for a Platform production environment that fail to contain all required parameters; (x) frame or mirror the whole or any part of the Platform; (xi) access the Platform (in whole or in part) (y) for benchmarking or competitive analysis of the Platform, or (z) in order to build a competitive product or service; (xii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Platform or any part, feature, function or user interface thereof; (xiii) remove or otherwise alter any proprietary notices or labels of or from the Platform, or otherwise falsify, delete or misrepresent the source or ownership of material; or (xiv) use the Platform in any way that violates this Agreement, any third party rights, or any applicable laws, rules, regulations or orders having the force of law (collectively, "**Laws**").

c. Access Credentials. Client and each Authorized User may be issued a user name, identification number, password, or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Platform ("**Access Credentials**"). As between Novi and Client, Client has and will retain sole and absolute responsibility for: (i) the security and use of Client's and its Authorized Users' Access Credentials; and (ii) all access to and use of the Platform directly or indirectly by or through Client Systems (as defined below), Client's or its Authorized Users' Access Credentials, Representatives, or any other means controlled by Client or any Authorized User, in each case, with or without Client's knowledge or consent, and including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

d. Technical Requirements for the Client Site and the Platform. For the Client Site, Client must throughout the Term have and maintain and control the applicable domain name. In order to access and utilize the Platform, Client must throughout the Term have and maintain a license/subscription to the United States version of QuickBooks Online and one of the United States version of QuickBooks Payments, the Stripe payment processing platform, or Novi Pay™, in each case, that supports API integration. If Client elects to utilize certain email marketing functionalities of the Platform, Client must throughout the Term have and maintain a license/subscription to MailChimp or Constant Contact that supports API integration. For the avoidance of doubt, as between Novi and Client, Client will be solely and absolutely responsible for complying with the technical requirements set forth in this Section, and for otherwise maintaining all Client Systems (as defined below), and including the "front end" communications connection linking Client's computers or network to the Internet. Client acknowledges and agrees that failure to meet any of such technical requirements will cause the Client Site to be unavailable, and will cause the Platform (in whole or in part) to function ineffectively or inappropriately. Novi will in no event be responsible for any losses,



failures or liabilities that arise as a result of Client's failure comply with the technical requirements set forth in this Section.

e. Third Party Services. Client acknowledges and agrees that: (i) the Platform (and thus, the Base Site and the Client Site) will be hosted by a third-party, and that one or more of the features, functionalities, data or services available on or via the Platform may be made available by third parties (all such third-parties, "**Third-Party Service Providers**" and such hosting, functionalities or services, "**Third-Party Services**"); (ii) the Platform and/or certain features or functionalities rely on API integration for certain features and functions, but that API integration has its own inherent level of unpredictability and inconsistency that is out of Novi's control, and that as such; (iii) Novi will have no liability for downtime or unavailability of, or errors or other issues in respect of, features, functionalities or data on the Platform (including any outputs thereof) caused in whole or in part by any Third-Party Services, Third-Party Service Providers, or API integration failures; (iv) Third-Party Service Providers may impose restrictions on use of the particular Third-Party Service, in addition to other terms and conditions, including without limitation, those set forth in any applicable terms and conditions agreed to by or otherwise made available to Client (collectively, "**Third-Party Requirements**"); (v) Client is solely responsible for compliance with, and will ensure that it and all Authorized Users comply with, all Third-Party Requirements; and (vi) Novi may at any time terminate and/or discontinue any Third-Party Services, including as a result of termination of its relationship with the applicable Third-Party Service Provider, provided that Novi will endeavor to provide Client with advance written notice of any such termination or discontinuation if reasonably practical. Novi will use commercially reasonable efforts to utilize adequate API integration.

f. Modifications to or of the Platform.

(i) Maintenance Releases; New Versions. During the Term, Novi may in its sole discretion make or issue updates, upgrades, releases or other adaptations or modifications of the Platform, in whole or in part (collectively, "**Maintenance Releases**") or may make new versions of the Platform, including new product lines that may be branded differently but are nonetheless part of the Platform master code base ("**New Versions**") available to Client under the terms and conditions of this Agreement. Maintenance Releases and New Versions, if any, will constitute a part of the Platform for purposes of this Agreement. For the avoidance of doubt, Novi reserves the right to offer any New Version subject to Novi's pricing in effect at the time of the New Version offer. If any Maintenance Release or New Version made available to Client or incorporated by Novi into the Platform requires for its proper and effective use the modification of certain Platform settings, Client Site Content, Client Data or any other accommodation, affirmative action or update on the part of Client (any such modification, accommodation or affirmative action on the part of Client, "**Accommodations**"), then Novi will notate such Accommodations in the relevant release note for such Maintenance Release or New Version, if and as applicable

(ii) Termination or Discontinuation of Features, Functionalities, Data or Services. Notwithstanding anything to the contrary in this Agreement or otherwise, Client acknowledges and agrees that Novi may from time to time discontinue, modify or otherwise alter certain features, functionalities, modules, components or other aspects of the Platform, in whole or in part, provided, however, that Novi will use commercially reasonable efforts not to materially degrade the key features or functionality of/for the Platform during the Term other than as described in Section 1(e)(vi) in respect of Third-Party Services, or as Novi determines reasonably necessary to: (x) prevent, mitigate or address a material security issue, (y) to comply and/or ensure compliance with applicable Laws (including a judicial or other governmental demand or order, subpoena, or law enforcement request), or (z) to prevent any fraudulent, misleading,



unlawful or unethical activities, or any activities that could reflect poorly on Novi or negatively impair its goodwill.

g. Caps on Usage and Data Storage. Client acknowledges and agrees that the Platform is not a document or data management system and therefore does not and is not intended to replace the need for Client to manage or maintain its documentation or data, including, without limitation, data backups or redundant document or data archives. Accordingly, unless provided otherwise in the Order Form: (i) Client's bandwidth use of the Platform, including, but not limited to, data retrieval from the Client Site and downloads from the Platform, will not exceed 50 gigabytes per month; (ii) Client's combined file storage capacity will not exceed 5 gigabytes (roughly 50,000 images at 100 kilobytes each). If Novi at any time notifies Client that Client has exceeded any of the foregoing restrictions (with email notification being sufficient), then Client will have 10 business days to cure the violation ("**Notice Period**"), and in the event Client fails to timely cure in all respects any such violation, Novi may in its sole discretion choose to impose additional usage or storage fees. For the avoidance of doubt: (i) Novi may block or impede Client's continued use or capacity (as applicable) during the Notice Period and at all times thereafter, unless and until Client cures the relevant violation in all respects or agrees to additional usage or storage fees before the expiration of the same; (ii) any "downtime" of the Platform or Client Site as a result of Client's exceeding of the usage or storage amounts set forth in this Section will result in no liability or other obligation whatsoever to Novi, including under Section 4(a).

## **2. Professional Services**

From time to time during the Term (as defined below), Novi may provide certain professional services, including Onboarding Services, Customization Services, and Other Professional Services (each as defined below), and each as set forth on the Order Form or otherwise offered and agreed to by Novi from time to time (all such services, collectively, "**Professional Services**").

a. Onboarding Services. "**Onboarding Services**" may include website styling, website content migration, creating dues rules and other settings, membership and event data import, project management, live training via webinar, or access to help articles and video, in each case, if and as expressly set forth in the Order Form. Novi will provide Onboarding Services up to the amount of hours expressly set forth on the Order Form, and any additional hours required to provide Onboarding Services will be charged at the rates set forth in the Order Form, or such other rates as in effect at the time such Onboarding Services will be provided.

i. Website Styling. If Novi provides website styling, Novi will design a white-labeled, Client-branded version of Novi's proprietary association website (the "**Base Site**," and as white-labeled with Client's brand, the "**Client Site**"). With the exception of reasonable white label adjustments, other than as being provided pursuant to Customization Services, the website styling portion of the Onboarding Services will not include any website development services, or customization of any feature, functionality, product, tools or other materials available on or via the Base Site.

ii. Content Migration. If Novi will provide content migration as part of Onboarding Services, then in connection with development of the Client Site, Novi will migrate (but not extract) relevant content from Client's current website to the Client Site (such content, "**Client Site Content**"). For the avoidance of doubt: (A) Novi makes no effort (and is no way obligated) to validate Client Site Content for completeness, correctness, accessibility or legality; and (B) after completion of the content migration portion of the



Onboarding Services, any further changes, updates or other management of Client Site Content will be the sole and absolute responsibility of Client, and any assistance with such matters may be provided by Novi only if agreed to in accordance with the Customization Services terms and conditions set forth below.

iii. Data Import. If Novi will provide data import as part of Onboarding Services, then Novi will import (but will not extract) relevant Client data, including membership and event data, into the Platform (such data, together with all data otherwise uploaded to, stored on or accessed by the Platform (including any Client data accessed via Third Party Services), and data relating to Client's use of the Platform, collectively, "**Client Data**"). Novi's data import obligations are expressly conditioned on Client's provision of Client Data to Novi in a "server-ready" condition, which means a form requiring no additional manipulation on Novi's part. For the avoidance of doubt: (A) Novi makes no effort (and is in no way obligated) to validate Client Data for completeness, correctness or usability; (B) in the event that all or any portion of Client Data is not "server-ready," Novi may, at its option, reject the all or the relevant portion of the Client Data; (C) at all times before, during and after completion of the data import portion of the Onboarding Services, any changes, updates or other management of Client Data will be the sole and absolute responsibility of Client, and any assistance with such matters may be provided by Novi only if agreed to in accordance with the Customization Services terms and conditions set forth below.

iv. No Customization. For the avoidance of doubt, other than as being provided pursuant to Customization Services, and other than via the Platform's standard setting options, the Platform will not include any customization of any feature, functionality, product, tools or other materials available on or via the Platform.

b. Customization Services and Other Professional Services. Novi may provide certain customization services relating to the Client Site or the Platform if expressly agreed to in the Order Form or if hereafter agreed to in writing by Client and Novi (any such services, "**Customization Services**"). Novi may also provide certain other professional services if expressly agreed to in the Order Form or if hereafter agreed to in writing by Client and Novi (such other professional services, "**Other Professional Services**"). For the avoidance of doubt, Novi may accept or reject any requests received from Client on or after the Effective Date to change any specifications set forth in the Order Form, this Agreement or otherwise agreed to in writing by the parties, or to perform any Customization Services or Other Professional Services not set forth in and agreed to in the Order Form, in Novi's sole and absolute discretion. Novi does not represent or warrant and makes no guaranty whatsoever that it can or will provide any Customization Services or Other Professional Services. If Novi will provide Customization Services or Other Professional Services, then: (i) such Customization Services or Other Professional Services will be provided at the pricing in effect at the time such Customization Services or Other Professional Services are provided, or at such other price mutually agreed upon by the parties in writing; (ii) any Results (as defined below) thereof will constitute a part of the Platform or Base Site (as applicable) subject to the terms and conditions of this Agreement (including Section 7 (Ownership)).

c. Effect of Client Delays. Novi is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement. In the event of any such delay or failure, Novi may extend all or any subsequent due dates as Novi deems reasonably necessary. The foregoing is in addition to, and not in lieu of, all other remedies Novi may have for any such failure or delay by Client. For the avoidance of doubt, Client will be responsible for payment for additional hours of work caused by any delay or failure caused in





whole or in part by Client at the rates in effect for the relevant Professional Services at the time of such delay or failure.

d. Other Matters.

i. During the Term, Novi may in its sole discretion update, upgrade, or otherwise adapt or modify the Base Site or the technology underlying the Base Site (and thus, in its sole discretion, the Client Site), which may include, among other things, error corrections, enhancements, improvements or other changes.

ii. Client acknowledges and agrees that the Client Site will include on each of its pages a prominent display of a Novi mark and text attribution adjacent to it in a format substantially similar to the following: "powered by Novi AMS."

iii. Client acknowledges and agrees that Novi will provide any Professional Services up to the amount of hours expressly set forth on the Order Form, or if not set forth in the Order Form, then as mutually agreed in writing by both parties, and that any additional hours required to provide any Professional Services will be charged at the rates in effect at the time such Professional Services will be provided.

### **3. Certain Client Responsibilities**

a. Delivery of Client Materials. Client will provide Novi with Client Data, Client Site Content and any other content, data information, and other materials that are otherwise reasonably requested by Novi in connection with its performance under this Agreement (such content, data, information and other materials, together with Client Data, Client Site Content, any Client brand guides or similar content, and any Platform output data derived from Client Data and/or other Client materials, including any Third Party Service, the "**Client Materials**"). Without limiting the generality of the foregoing, at all times during the Term, Client will keep its Nameserver records directed to the IP Addresses of Novi's servers at all times and participate in updating those records should the IP Addresses change. For the avoidance of doubt, Novi makes no effort (and is no way obligated) to validate any Client Materials for completeness, correctness, accessibility or legality.

b. Cooperation. Client will cooperate with Novi in all respects, including provision of information and support as may be reasonably required for purposes of Novi's performance under this Agreement. Without limiting the generality of the foregoing, Client will ensure that its information technology team responds to any Novi request for information or cooperation promptly and without undue delay, and in any event, within two business days of the request.

c. Project and Account Managers. Each party will designate project or account managers to manage the parties' relationship pursuant to this Agreement. Subject to Section 15, the parties' project or account managers may communicate via telephone or email regarding this Agreement, and provided, however that: (i) Novi may rely and act on instructions, approvals or other communications of Client representatives who Novi believes have authority to provide such instructions, approvals or other communications; and (ii) any authorization by Novi to provide Professional Services may be provided only by Novi's Chief Executive Officer in writing (with email being sufficient).

d. Client Site Terms of Use and Privacy Policy. Client will provide a legally compliant website terms of use and privacy policy to be posted on the Client Site. Such terms of use and privacy policy will constitute



Client Site Content for purposes of this Agreement. Client acknowledges that Novi does not provide and that any feedback or materials provided by Novi as part of or in connection with the Platform or any Professional Services do not constitute legal or other professional advice, and that Client is solely responsible for: (a) determining the legality, validity and enforceability of any and all Client Materials, including Client Site Content (including any terms of use or privacy policy) and Client Data; and (b) the accuracy, accessibility, safety and reliability of any language contained within such Client Materials. Client acknowledges and agrees that: (i) the Base Site, and thus, the Client Site, leverages cookies and/or other automatic data collection technologies (such as, without limitation, Google Analytics and/or Full Story) to collect and store information when users access the Client Site and to otherwise track activities on the Client Site over time; and (ii) if and to the extent Client enables and/or directs the configuration of the Client Site to leverage these technologies, Client is and will be responsible for maintaining legally compliant disclosures and/or consents for the Client Site's use of the same. Client is strongly advised to seek legal counsel in respect of its Client Site terms of use and privacy policy.

e. Compliance with Laws and Third Party Rights. Client will ensure that Client Materials and Client's activities in connection with or use of the Client Site or the Platform do not and will not violate any Laws or infringe on a third party's intellectual property or other rights. For the avoidance of doubt, Client acknowledges and agrees that neither Novi nor its employees provide legal advice, and that Client remains solely and exclusively responsible for its (including the Client Site's and Client's activities in connection with or use of the Client Site or the Platform) compliance with all Laws. Client will consult with legal counsel of its choice to obtain appropriate legal advice.

f. Accounting Capabilities. Client acknowledges and agrees that neither Novi nor its employees provide accounting or tax advice, and that required and proper use of Third Party Services (including QuickBooks and QuickBooks Payments) are the sole and absolute responsibility of Client.

#### **4. Service Levels and Customer Support**

a. Service Level and Remedy. Novi will use commercially reasonable efforts to maintain the Platform in a manner which minimizes errors and interruptions and to make the Platform available to Client 99% of the time during each calendar month, except for: (i) planned or scheduled downtime; (ii) downtime or degradation due to: a Force Majeure Event (as defined below) or any other circumstances beyond Novi's reasonable control, including Internet service provider or hosting provider failure or delay; all or any portion of the Client Materials themselves (including Client Data); (iii) any suspension or termination of Client's or any Representatives' access to or use of the Platform as permitted by this Agreement; or (iv) any one or more of all or a portion of the Client Causes (as defined below). If the availability of the Platform falls below 99% in any calendar month, then, as Client's sole and exclusive remedy, Novi will provide to Client a pro rata credit against the following month's Platform Fee (to be pro-rated if Client pays the Platform Fee annually). By way of example, if the Platform is available 89% of the time in a given calendar month, then Client will receive a credit in the amount of 11% of the applicable Platform Fee for such month to be applied to the applicable Platform Fee for the following month. If Client pays an annual Platform Fee, then any credits received pursuant to this paragraph will be applied to the annual Platform Fee for the next Renewal Term, if any. Novi's obligation to issue a credit in accordance with this Section is subject in all cases to Client's: (x) reporting of any downtime immediately on becoming aware of it; and (y) written request for a credit within 10 days of the start of the month for which the credit would apply. This Section 4(a) sets forth Novi's





sole obligation and liability and Client's sole remedy for any failure of the availability of the Platform, including to meet or exceed 99%.

b. Customer Support. In the event Client identifies and reports a Material Error (as defined below) to Novi, Novi will use commercially reasonable efforts to correct or cure such Material Error at no additional cost to Client. Additionally, Novi will use commercially reasonable efforts to provide Client with support for "how do I" and "best practice" questions that may arise at no additional cost to Client.

i. **"Material Error"** means a verifiable non-conformity, failure, defect, malfunction or bug which prevents the Platform from performing in accordance with the applicable specifications (including any Platform documentation), but excluding: (A) cosmetic aspects of the interface; (B) any non-material errors, as determined by Novi in its sole, but reasonable discretion, and including, without limitation, errors which do not materially degrade the business functionality of the Platform; (C) any nonconformity or other error that arises out of, relates to or is the direct or indirect result of any changes, modifications, deletions or other adjustments to the Platform or Client Materials (including the submission of additional Client Materials into the Platform) by Client, by Novi pursuant to Client's (or any Representative's) instructions or by any third party, Client's misuse or manipulation of or damage to the Platform or Client Materials in any respect (including, without limitation, use of the Platform by Client or any Representative other than as permitted by this Agreement), any content that becomes outdated over time, or Client's failure to timely and appropriately implement any Accommodations; (D) any nonconformity or other error that occurs only in older versions of web browsers or operating systems (versions prior to the most recently released version), or only in web browsers or operating systems that account for less than 5% of a website's or application's regular traffic; (E) any nonconformity or other error that arises out of, relates to or is the direct or indirect result of any Third Party Services (including API integrations, it being acknowledged that API integration has its own inherent level of unpredictability and inconsistency that is out of Novi's control); (F) any nonconformity or other error that arises out of, relates to or is the direct or indirect result of Client's (or any of its Representative's) combining or merging the Platform with any hardware or software not supplied or identified as compatible by Novi; or (G) any nonconformity or other error that arises out of, relates to or is the direct or indirect result of Client's failure to comply in any respect with this Agreement, including, without limitation, the technical requirements set forth in Section 1(d), or failure to maintain proper and update to date versions and licenses of QuickBooks Online and QuickBooks Payments, Stripe, or the Novi Pay™ payment processing platform, if and as applicable. Items (C) through (G) of this paragraph, in the context of any nonconformity, error or downtime relating to the Platform, are collectively, referred to as the **"Client Causes"**.

ii. With respect to: (A) any errors, defects, malfunctions or bugs of the Platform other than Material Errors, or (B) any support beyond commercially reasonable efforts required to correct or cure a Material Error or to support "how do I" or "best practice" questions, Novi may accept or reject any requests received from Client to provide extra support in Novi's sole and absolute discretion (**"Extra Support"**). Novi does not represent or warrant and makes no guaranty whatsoever that it can or will provide any Extra Support. If Novi will provide Extra Support, then: (x) such Extra Support Services will be provided at the pricing in effect at the time such Extra Support is provided, or at such other price mutually agreed upon by the parties in writing; (y) any Results thereof will constitute a part of the Platform or Base Site (as applicable) subject to the terms and conditions of this Agreement (including Section 7 (Ownership)). All Extra Support (if any) will be deemed Other Professional Services, and thus, Professional Services, for all purposes of this Agreement.



iii. For the avoidance of doubt, any error, non-conformity, failure, defect, malfunction or bug arising out of or relating to any Third Party Services should be reported to the applicable Third Party Services provider.

## **5. Term and Termination**

a. Term. The initial term of this Agreement ("**Initial Term**") will commence as of the Effective Date and will terminate on the date that is 12 months from the date of the parties' initial strategy call following the Effective Date. The Initial Term, and any Renewal Term (as defined below) will automatically renew for successive one-year renewal terms (each, a "**Renewal Term**") unless either party provides the other with written notice of its intent to not renew at least 60 days in advance of the expiration of the Initial Term or the then-current Renewal Term. The Initial Term and each Renewal Term (if any) are collectively referred to as the "**Term**."

b. Termination. A party may terminate the Term: (i) immediately, by providing the other party with written notice, if such other party is in material breach of this Agreement that is not capable of cure (as determined by the non-breaching party in its sole, but reasonable discretion) or (if capable of cure) is not cured within fifteen (15) days of receipt of written notice of such breach; (ii) upon written notice, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; and (iii) as otherwise expressly set forth in this Agreement.

c. Effect of Termination. Upon expiration or termination of the Term for any reason: (i) Novi will immediately cease Client's access to the Platform; and (ii) if the Disclosing Party (as defined below) requests it within 14 days of the effective date of termination or expiration, the Receiving Party will, at its option, either return to the Disclosing Party or certify destruction of, any and all copies of Confidential Information in the possession of the Receiving Party, provided, however, that if Client timely requests a copy of any Client Materials that, at the time of expiration or termination of the Term, were exportable from the Platform ("**Exportable Materials**"), then Novi will provide Client with limited access to the Platform solely for purposes of exporting these Exportable Materials in a csv file format or substantially similar or equivalent format based on Novi's standard exportation process (it being acknowledged that Client could have downloaded Exportable Materials from the Platform prior to expiration or termination of the Term in a csv file format). Client's limited access to the Platform in any such case will also be subject to the additional restrictions set forth in this Agreement. For the avoidance of doubt, Client acknowledges and agrees that Exportable Materials will never include data obtained from or located on the Platform as a result of Third Party Services, such as any QuickBooks data outputs. Following the expiration of this 14-day post-termination period, Novi will have no obligations whatsoever to Client with respect to the return of any Client Materials. Notwithstanding termination or expiration of the Term for any reason, the following provisions, as well as any other provision which, by its nature, would be reasonably expected to survive such termination or expiration, will survive: 1(b), 5(c), 6(b), 6(c), 7, 8(b), and 9 through 17 (inclusive).

d. Suspension of Access to the Platform. Novi may, directly or indirectly and by any lawful means (including any disabling device), suspend or otherwise deny Client's or any Representative's access to or use of all or any part of the Platform (including the Client Site) without incurring any resulting obligation or liability, if: (i) Client fails to pay any amount when due under this Agreement, and such failure continues for fifteen (15) days or more after the relevant due date; (ii) Novi believes, in its sole and absolute discretion,



that Client or any Representative: (x) has failed to comply with any term of this Agreement (including, without limitation, the bandwidth limitations set forth herein); (y) has accessed or used the Platform beyond the scope of the authorization granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of Novi; (z) is, has been, or is likely to be involved in any fraudulent, misleading, unlawful or unethical activities, or in any activity that could reflect poorly on Novi or negatively impair its goodwill (in each case, in Novi's sole and absolute discretion); (iii) the Term is terminated or expires; (iv) Novi receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Novi to do so. This paragraph does not limit any of Novi's other rights or remedies whatsoever, including any rights or remedies at law, in equity or under this Agreement.

## **6. Fees and Payment Terms**

a. **Fees.** In consideration of the Platform, Client will pay all fees specified in the Order Form ("**Fees**"). Client will pay the annual Platform Fee for the Initial Term in accordance with the terms set forth on the Order Form or, if left blank or unclear, in full within five (5) business days of the Effective Date, the annual Platform Fee for each Renewal Term in full within five (5) business days of the start date of such Renewal Term, and all other amounts due to Novi in accordance with the terms set forth on the Order Form or Statement of Work or, if left blank or unclear, within 30 days of the invoice. Except as otherwise set forth in this Agreement or the Order Form, all payment obligations of Client under this Agreement are non-cancelable and Fees paid are non-refundable. Client will pay all Fees in US Dollars by certified check, ACH, or wire or other electronic transfer of immediately available funds to an account designated in writing by Novi. Other than as set forth in Section 4(a), all amounts payable to Novi under this Agreement will be paid by Client to Novi in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason or any deduction or withholding of tax as may be required by applicable Law.

b. **Overdue Charges.** If any invoiced amount is not received by Novi by the due date, then without limiting Novi's rights or remedies, those charges will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Law, whichever is lower. Additionally, Client will reimburse Novi for all costs incurred by Novi in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees.

c. **Taxes.** Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Client is responsible for paying all Taxes associated with its purchase of access to the Platform. If Novi has the legal obligation to pay or collect Taxes for which Client is responsible under this Section, NOVI will invoice Client and Client agrees to pay that amount unless Client provides Novi with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Novi is solely responsible for taxes assessable against it based on its income, property and employees.

d. **Fee Increases.** Novi may increase annual Fees from time to time upon 45 days' advance written notice to Client (with email delivery being sufficient). Renewal of the Initial Term and any Renewal Term will constitute Client's acceptance of any increase in annual Fees. Novi may increase Fees for any Professional Services at any time and from time to time. For the avoidance of doubt, for Professional Services, Client will pay the applicable Fees in effect at the time such Professional Services are provided, and notwithstanding anything to the contrary in the Order Form or otherwise.



e. Future Functionality. Client acknowledges and agrees that its entrance into this Agreement is not contingent on the delivery of any future functionality or features of the Platform or the Client Site, or dependent on any oral or written public comments made by Novi regarding any such future functionality or features unless otherwise noted on the Order Form.

## **7. Ownership and Licenses**

a. Novi Ownership. All right, title, and interest in and to the following, including all features, functionalities and codes thereof and any and all related intellectual property rights (whether registered, unregistered, granted, applied for, or otherwise now or hereafter in existence), are and will remain solely and exclusively with Novi or its licensors: (i) the Platform; (ii) the Base Site; (iii) the Client Site (including the source code), but excluding Client Materials; (iv) the "Novi AMS" name, brand, marks and other similar intellectual property; and (v) any and all software, tools, components, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, templates, concepts, database structures, research, proposals, materials, and all other work product, developments or improvements of any nature whatsoever, used (but excluding Client Materials), created, prepared, developed, produced, authored, edited, amended, conceived or reduced to practice by Novi independently or jointly with others as a result of Professional Services (in each case, regardless of when or where prepared or whose equipment or other resources are used in preparing the same) (collectively, "**Results**"). Client has no right, license, or authorization with respect to any of the foregoing except as expressly set forth in Section 1 or the applicable third-party license, in each case subject to the terms and conditions of this Agreement. All other rights in and to the foregoing are expressly reserved by Novi or its licensors (as applicable).

b. Client Ownership. All Client Materials will be and remain the sole and exclusive property of Client or its Authorized Users, as applicable. Client grants a worldwide, fully-paid up, royalty-free license to Novi its licensors and its hosting service provider, to host, copy, transmit and display Client Materials as necessary for Novi to provide the Platform in accordance with this Agreement. Additionally, Client acknowledges and agrees that Novi may: (i) use and display Client's name and logo to refer to Client as a customer; (ii) use and display excerpts of public-facing portions of the Client Site for training and marketing purposes; (iii) use and display any feedback, suggestions and/or reviews in respect of the Platform or any Professional Services provided by Client or any of its Authorized Users or representatives for marketing and training purposes (in which case, Novi may identify Client and/or the applicable Authorized User or representative, including name and title, and may display Client's logo and/or the Authorized User's or representative's image); (iv) to the extent relevant to the calculation of Fees or other amounts due by Client hereunder, access, analyze and otherwise utilize Client Data (and any other relevant Client Materials) to determine or validate such calculation, to determine Client's pricing tier (e.g., for purposes of a Renewal Term, if any), and otherwise perform reasonably related activities; (v) access, analyze and otherwise utilize Client Data; to identify trends in usage and other patterns for the purpose of improving the Platform, any Professional Services, Novi's support of any thereof, or supporting Client's efficient and proper use of any thereof; and (vi) access, analyze and otherwise utilize Client Materials to create derivative data on an aggregated and anonymous basis for its business purposes, including without limitation, for industry benchmarking.

c. License to use Feedback. Client grants to Novi a worldwide, perpetual, irrevocable, transferable and royalty-free license to use and incorporate into the Platform any suggestion, enhancement request, recommendation, correction or other feedback provided by Client or its Representatives relating to this



Agreement (collectively, **"Feedback"**). Any improvements, enhancements or other modifications created, prepared, produced, authored, edited, amended, conceived or reduced to practice by Novi (whether alone or together with Client or any other third party or parties) arising out of or relating to such Feedback are and will remain the sole and exclusive property of Novi.

d. Further Assurances. During and after the Term, each party will cooperate with the other to do any and all things which reasonably necessary or desirable to establish, maintain, protect and enforce a party's exclusive ownership of the property identified in this Section.

## **8. Data and Security.**

a. Data Privacy. Novi will process all Personal Information provided by Client pursuant to Novi's Data Processing Addendum.

b. Novi Security and Data Backup.

i. Novi will employ security measures with respect to the Platform in accordance with applicable industry practice. Novi will use commercially reasonable efforts to maintain Payment Card Industry (PCI) Data Security Standard (DDS) compliance for the portions of the Platform that may handle the API integration and processing of credit card data. However, Client agrees that PCI DDS compliance is ultimately Client's responsibility, including for any other aspect of handling or processing credit card information, and that any changes made to the Platform by the Client or at the Client's direction may affect the Client's compliance with PCI DSS requirements. Client will be solely and absolutely responsible for ensuring that any such changes are compliant with PCI DSS requirements.

ii. While the Platform does not and is not intended to replace the need for Client to maintain regular data backups or redundant data archives, Novi will use commercially reasonable efforts to cause the Platform to perform routine data backups, excluding however, any data obtained from or located on the Platform as a result of Third Party Services, such as any QuickBooks data outputs. Client is encouraged and directed to perform and generate its own regular data back-ups and/or redundant data archives, and may support that process by exporting Exportable Materials from the Platform, extracting data permitted by the Platform to be extracted via one or more enabled Platform-APIs, or using Novi's custom reporting functionality to automatically email a report. In the event of any loss, destruction, damage, or corruption of any Client Materials caused by the Platform, Novi will, as its sole obligation and liability and as Client's sole remedy, use commercially reasonable efforts to restore the Client Materials from Novi's then most current backup of such Client Materials. In the event of any loss, destruction, damage, or corruption of Client Materials caused by Client, on the mutual consent of Client and Novi, Client may engage Novi to use commercially reasonable efforts to restore such Client Materials from Novi's then most current backup of such Client Materials, subject to charge at Novi's then current rates.

c. Client Materials. Client will: (i) be solely and completely responsible for the accuracy, quality and legality of any and all Client Materials, the means by which Client acquired Client Materials, and the use of the same by Client and its Representatives; and (ii) not upload, store or otherwise make available on the Platform or the Client Site any Client Materials that contains Malicious Code or that violates any Laws, including, without limitation, any third party intellectual property, privacy or other rights. Without limiting the generality of the foregoing, if Client Materials include any personal information of individuals, Client will ensure that its and its Representatives' collection and submission into the Platform or Client Site of the same, and its, its Representatives' and Novi's use and storage of the same as contemplated by this





Agreement does not violate any third party rights, and otherwise complies with Laws, including, without limitation, any Laws relating to the consent of or disclosure to consumers with respect to the collection, use or disclosure of such information as contemplated by this Agreement. If Novi receives information indicating or otherwise reasonably believes that all or any portion of any Client Materials may violate Laws, any third-party rights or otherwise could reflect poorly on Novi or negatively impair its goodwill (in each case, in Novi's sole and absolute discretion), Novi may so notify Client and, in such event, Client will promptly remove such Client Materials from the Platform or the Client Site (as applicable) or modify such Client Materials in order to resolve the potential violation or issue (as applicable). If Client does not promptly take required action in accordance with the preceding sentence, Novi may unilaterally disable and delete the applicable Client Materials from the Platform or the Client Site (as applicable), and (in its sole discretion) terminate this Agreement or any portion thereof.

d. Client Security. Client will employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (i) prevent unauthorized access to or use of Platform, and will notify Novi promptly of any such unauthorized access or use; (ii) securely administer the distribution and use of all Access Credentials and Client Materials and protect against any unauthorized access to or use of the Platform, Access Credentials and Client Materials; and (iii) control the content and use of Client Materials.

e. Platform and Systems Control. Except as otherwise expressly provided in this Agreement, as between the parties: (i) Novi has and will retain sole control over the operation, provision, maintenance, and management of the Platform; (ii) Client has and will retain sole control over the operation, maintenance, and management of, and all access to and use of its information technology infrastructure, including, without limitation, its computers, software, databases (excluding the Platform), electronic systems (excluding the Platform, but including any other database management systems), and networks, whether operated directly by Client or through the use of third-party services ("**Client Systems**").

## **9. Confidentiality**

a. Confidential Information. For purposes of this Agreement, the term "**Confidential Information**" means any and all confidential or proprietary information of the Disclosing Party (as defined below) or of a third party and held by the Disclosing Party on a confidential basis, including, without limitation, documents, reports, analyses, data, studies, drawings, samples, suppliers, customers, pricing, pricing techniques, copyright, trademark and patent applications, marketing and sales techniques and plans, projections, technology, methods, procedures, software (including all documentation and code), hardware and system designs, architectures and protocols, trade secrets, know-how, and observations, whether disclosed orally or in writing, whether or not marked as "confidential," and whether disclosed or made available to the Receiving Party before, on or after the date of this Agreement. "**Disclosing Party**" means the party disclosing or making available the Confidential Information. "**Receiving Party**" means the party receiving the Confidential Information. Confidential Information includes the terms, but not the existence of, this Agreement.

b. Exceptions to Confidential Information. "**Confidential Information**" will not include any information that, as evidenced by a written document: (i) was in the public domain at the time of disclosure; (ii) became publicly available after disclosure to the Receiving Party without breach of this Agreement; (iii) was lawfully received by the Receiving Party from a third party without restriction; (iv) was known to the Receiving Party, its employees or agents prior to its receipt from the Disclosing Party, as evidenced by the written records of the Receiving Party; or (v) was independently developed by the Receiving Party without





use or reference to the Confidential Information and without breach of this Agreement. If Confidential Information is required to be disclosed by the Receiving Party pursuant to judicial order or other compulsion of law, the Receiving Party will provide to the Disclosing Party prompt written notice of such order (to the extent legally permissible), cooperate with the Disclosing Party, at the Disclosing Party's expense, to maintain the confidentiality of such information, and comply with any protective order imposed on disclosure of such information.

c. Duty of Confidentiality. The Receiving Party will: (i) use commercially reasonable efforts to safeguard Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; (ii) use Confidential Information for the sole purpose of performing its obligations under or exercising its rights pursuant to this Agreement; (iii) restrict disclosure of Confidential Information (including Client Materials, in the case of Novi, and the Platform, in the case of Client) to those of its officers, directors, employees, professional advisors, contractors, agents and representatives with a need to know such information for the sole purpose of performing its obligations under or exercising its rights pursuant to this Agreement; and (iv) not modify, reverse engineer, decompile, create other works from, or disassemble any Confidential Information.

## **10. Non-Solicitation**

During the Term and for a period of two years thereafter, neither Client, its parents, subsidiaries or affiliates, nor any company or other entity controlled by Client or its parents, subsidiaries or affiliates (whether currently existing or hereafter acquired or formed) will, directly or indirectly, in any capacity: (a) contact, solicit, attempt to contact or solicit, solicit for hire or engagement, hire or engage any employee or contractor of Novi for any reason whatsoever; (b) solicit or induce, or attempt to solicit or induce, any other client, customer or vendor of Novi to purchase any goods, Platform or products which are in any way competitive with any goods, Platform or products offered for sale or otherwise made available by Novi or its affiliates; or (c) otherwise impede or interfere in any way with any client or customer relationship of Novi.

## **11. Representations and Warranties; Disclaimer**

a. Representations and Warranties. Each party represents and warrants to the other that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (ii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (iii) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. Client further covenants, represents and warrants that it has all rights, authorizations and consents necessary to provide Novi with the Client Materials, and that Client Materials, the use thereof by Novi in accordance with the terms of this Agreement, and Client's activities in connection with or use of the Client Site or Platform do not and will not violate any Laws or infringe on a third party's intellectual property or other rights (including any contract rights).

b. Disclaimers.



i. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, NOVI IS PROVIDING THE PLATFORM AND ALL PROFESSIONAL SERVICES “AS IS” AND NOVI HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, WITH RESPECT TO THE SAME. NOVI MAY CHANGE OR SUSPEND THE PLATFORM OR ANY PROFESSIONAL SERVICES (IN WHOLE OR IN PART), OR MAY CHANGE, SUSPEND OR DISCONTINUE THE NATURE, FEATURES, FUNCTIONS, SCOPE, OR OPERATION OF THE PLATFORM OR ANY PROFESSIONAL SERVICES (IN WHOLE OR IN PART), AT ANY TIME AND FROM TIME TO TIME. WITHOUT LIMITING THE FOREGOING, NOVI MAKES NO WARRANTY OF ANY KIND THAT THE PLATFORM, OR ANY PROFESSIONAL SERVICES OR ANY RESULTS OF THE USE THEREOF, WILL CONTINUE TO BE PROVIDED, FUNCTION AS DESCRIBED, CONSISTENTLY OR IN ANY PARTICULAR MANNER, MEET CLIENT’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD PARTY SERVICES INCLUDED IN THE PLATFORM ARE PROVIDED “AS IS” AND SUBJECT TO ANY APPLICABLE THIRD PARTY SERVICE PROVIDER TERMS AND CONDITIONS. ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY SERVICES IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY SERVICE PROVIDER. NOVI WILL IN NO EVENT BE RESPONSIBLE FOR ANY ERRORS OR INACCURACIES OF OR IN RELATION TO ANY CLIENT MATERIALS (IT BEING ACKNOWLEDGED THAT NOVI HAS NO RESPONSIBILITY OR CONTROL OVER THE SAME), OR FOR SERVICE INTERRUPTIONS OF THE CLIENT SITE OR ANY CLIENT MATERIALS, INCLUDING POWER OUTAGES OR SYSTEM FAILURES (IT BEING ACKNOWLEDGED THAT CLIENT’S REMEDIES IN RESPECT OF THE SAME ARE AS SET OUT IN SECTION 4(a)), OR FOR ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE OR LOSS OF, THE CLIENT SITE OR ANY CLIENT MATERIALS.

ii. Without limiting the generality of the foregoing, Client acknowledges and agrees that, while the Base Site is (and thus, the Client Site will be mobile-friendly) the Platform (including the administrative portions thereof) is not specifically designed to work on mobile devices. As a result, some of the features and functions of the Platform will not be available or will not operate properly on mobile devices. Use by Client, its Representatives or its organization members of the Platform on a mobile device is done at Client’s sole and absolute risk. Use of the Platform may be partially available through a compatible mobile device, the Internet, or using additional software. Client agrees that Client is solely and absolutely responsible for these requirements, including any applicable changes, updates and fees associated with such action, as well as the terms of Client’s agreement with Client’s mobile device and telecommunications provider.

## **12. Indemnification**

a. NOVI Indemnification. Novi will indemnify, defend, and hold harmless Client from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) incurred by Client resulting from any claim or action by a third party (other than an affiliate of Client) alleging that Client’s or an Authorized User’s use of the Platform (excluding Client



Materials and Third-Party Services) in accordance with this Agreement infringes or misappropriates such third party's patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (i) Third-Party Services or Client Materials; (ii) access to or use of the Platform in combination with any hardware, system, software, network, or other materials or service not provided by Novi or specified for Client's use in the Platform documentation; (iii) modification of the Platform other than by or on behalf of Novi or with Novi's written approval in accordance with Novi's written specification; (iv) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of Novi; or (v) act, omission, or other matter described in Section 12(b)(i), Section 12(b)(ii), Section 12(b)(iii), or Section 12(b)(iv), whether or not the same results in any action or claim against or Losses by any Novi Indemnatee.

b. **Client Indemnification.** Client will indemnify, defend, and hold harmless Novi and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Novi Indemnatee**") from and against any and all Losses incurred by such Novi Indemnatee arising out of, relating to or resulting from: (i) Client Materials or any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Representative, including any use, disclosure or storage of the same by or on behalf of Novi in accordance with this Agreement, and Novi's compliance with any specifications or directions provided by or on behalf of Client or any Representative to the extent prepared without any contribution by Novi; (ii) any transactions or activities conducted by Client on, through or as a result of the Client Site, including any Client customer or member transactions, advertising sold on or through the Client Site, event registrations, E-commerce transactions, or membership dues; (iii) Client's breach (or alleged breach) of any of its representations, warranties, covenants, or obligations under this Agreement; or (iv) negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Representative, or any third party on behalf of Client or any Representative, in connection with this Agreement.

c. **Indemnification Procedure.** Each party will promptly notify the other party in writing of any action or claim for which such party believes it is entitled to be indemnified pursuant to Section 12(a) or Section 12(b), as the case may be. The party seeking indemnification (the "**Indemnatee**") will cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor will promptly assume control of the defense and will employ counsel reasonably acceptable to the Indemnatee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor will not settle any action or claim without the Indemnatee's prior written consent, which will not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such action or claim, then the Indemnatee will have the right, but no obligation, to defend against such action or claim, including settling such action or claim after giving notice to the Indemnitor, in each case, in such manner and on such terms as the Indemnatee may deem appropriate. The Indemnatee's failure to perform any obligations under this Section 12(c) will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

d. **Mitigation.** If all or any portion of the Platform or its underlying technology is, or in Novi's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, or if Client's or any Representative's use of the Platform is enjoined or threatened to be enjoined, Novi



will, at its sole option and sole cost and expense: (i) obtain the right for Client to continue to use the Platform, materially as contemplated by this Agreement; (ii) modify or replace the Platform, in whole or in part, to seek to make the Platform (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute a part of the Platform, as applicable, under this Agreement; or (iii) if Novi (in its sole discretion) determines that neither of the foregoing options is commercially feasible, by written notice to Client, terminate this Agreement with respect to all or part of the Platform, and require Client to immediately cease any use of the Platform or any specified part or feature thereof.

**e. THIS SECTION 12 SETS FORTH CLIENT'S SOLE REMEDIES AND NOVI'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PLATFORM, OR ANY OTHER MATERIALS PROVIDED BY OR MADE AVAILABLE BY NOVI UNDER THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**

### **13. Limitation on Liability; Mutual Waiver of Class Action Participation**

a. Exclusion of Damages. **IN NO EVENT WILL NOVI OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE PLATFORM; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

b. Cap on Monetary Liability. **IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF NOVI AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AMOUNTS PAID BY CLIENT TO NOVI UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

c. Waiver of Class Action Participation. Neither Client nor Novi may be a representative of other potential claimants or a class of potential claimants in any dispute concerning or relating to this Agreement, nor may two or more individuals' disputes be consolidated or otherwise determined in one proceeding. CLIENT AND NOVI ACKNOWLEDGE THAT THIS SECTION WAIVES ANY RIGHT TO PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY CLASS ACTION.

### **14. Force Majeure**



Except for a party's payment obligations under this Agreement, each party will be excused from performance of its obligations for any period and the time of performance will be extended as reasonably necessary under the circumstances, to the extent that such party is prevented from performing, in whole or in part, its obligations under this Agreement, as a result of acts of God, any governmental authority, war, civil disturbance, court order, labor dispute or any other cause beyond its reasonable control, including Third Party Service malfunctions (such as interruption of Third Party Service services or functions) hurricanes, inclement weather, and failures or fluctuations in electrical power, heat, light, telecommunication equipment or lines or any other equipment or network outside of Novi's reasonable control (each, a **"Force Majeure Event"**).

## **15. Notice**

All notices, demands, requests or other communications which may be or are required to be given, served, or sent by a party to the other party pursuant to this Agreement will be in writing and will be hand delivered, sent by certified mail, return receipt requested, sent by widely-recognized national or international delivery courier service or sent via email with confirmed answer back, addressed as set forth below. Documents delivered by hand will be deemed to have been received upon delivery; documents sent by email will be deemed to have been received when the answer back is received; documents sent by certified mail, or courier service will be deemed to have been received upon their receipt, or at such time as delivery is refused by the addressee upon presentation. Either party may change the address for notice by notifying the other parties of such change in accordance with this Section.

If to Novi:

Novi AMS, LLC

Attn: Legal Notice

13506 Summerport Village Parkway, Ste. 805

Windermere, FL 34786

In all cases, with copy to: [info@noviams.com](mailto:info@noviams.com).

If to Client:

To the address designated on the Order Form and marked to the attention of "Legal Notice".

## **16. Dispute Resolution; Governing Law and Venue**

a. The parties will cooperate and attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof (a **"Dispute"**) promptly by negotiating between persons who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration and performance of the provisions or obligations of this Agreement that are the subject of the Dispute.



b. Any civil action or legal proceeding in respect of any Dispute which cannot otherwise be resolved as provided above after the parties have negotiated the resolution of the Dispute for at least fifteen (15) business days will be brought solely and exclusively in the courts of record of the State of Florida in Orange County or the United States District Court, Middle District of Florida, Orlando Division, and each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

**c. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

d. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to conflict of law principles.

## **17. Miscellaneous**

Client may not assign this Agreement without the prior written consent of Novi; provided, however, that Client may assign this Agreement to a third party acquiring all or substantially all of Client's equity interests or assets without the prior written consent of Novi (subject to Client providing Novi with written notice of such acquisition as soon as reasonably practical upon the closing of such acquisition). No delay or omission by Novi to exercise any right or power under this Agreement will impair any such right or power, or be construed as a waiver thereof. A waiver by Novi in any one instance of any of the covenants, conditions or agreements to be performed by Client will not be construed as a waiver with respect to any succeeding instance in which the same provision may apply. Except as otherwise provided in this Agreement, Novi may update, amend or change these Terms at any time. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement and will not limit or otherwise affect in any way its meaning or interpretation. This Agreement is for the sole benefit of the parties and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement, which will remain in full force and effect. This Agreement (including the Order Form) represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersede all other negotiations, understandings and representations (if any) made by and between such parties, whether orally or in writing. The Order Form may be executed in counterparts, each of which will be an original, but all of which together will constitute one and the same instrument. Confirmation of execution by electronic transmission signature page or other electronic execution means will be binding, and each party irrevocably waives any objection that it has or may have in the future as to the validity of any such electronic execution.