

NovaHost Hosting

1. INTRODUCTION

- 1.1. These terms and conditions ("**Terms**") govern the purchase and use of services ordered by the Client and provided by Inevative as set out in the **online order form** ("**Services**").

2. HOSTING SERVICES

- 2.1. As part of the Services, NovaHost will provide the support (as provided under Clause 3), configure, install, house, maintain, upgrade, monitor, modify and operate the computer equipment, server(s), operating software, network equipment and components (collectively, "**NovaHost's Systems**") as necessary to provide the Services.
- 2.2. The Client is responsible for securing and maintaining its own Internet connectivity to access NovaHost's Systems.
- 2.3. Subscription to the NovaHost Webhosting services implies acceptance to the terms of use and service outlined herein this document

3. SUPPORT

- 3.1. NovaHost will provide support to the Client as part of its provision of the Services as provided under this Clause, as follows:
 - (a) **Onsite Backups:** Rotation of backup tapes, as provided by the Client, for the purpose of Client hard disk drives archival. Frequency of this service is once per every 24 hours. Backup data is stored for 7 days after the completion of that days data backup process;
 - (b) **Supply of Backup Data:** NovaHost will provide to the Client, by request for a nominal fee, CD format copies of backup data for storage by the Client;
 - (c) **Equipment Software Updates:** Installation and activation of operating system patches and updates as they are released by the operating system software vendor;
 - (d) **Equipment Management:** Management and inspection of Client's equipment in view of ensuring correct operation of system function, RAM, hard drives disk space allocation and usage. In the event that NovaHost can foresee any issues arising from investigations into the Client's equipment, NovaHost will provide the Client with written recommendations to combat the issue;
 - (e) **Domain Management:** NovaHost will monitor and inform the Client of domain name renewal periods. If these domains are controlled by NovaHost, NovaHost will renew the Client's domain name(s) and invoice the Client accordingly;
 - (f) **Monitoring:** NovaHost will provide internal network and infrastructure monitoring 24 hours a day 7 days a week alerting NovaHost technical staff immediately of any issues relating to network connections and connectivity to the world wide web. NovaHost will avoid any interruption of sixty (60) seconds or more in the

availability to users of any application requiring internet connectivity residing on NovaHost's Systems and made available through the Services ("**Downtime**"), only if such interruption is due to either failure by NovaHost to manage a situation so as to cause interruption in web availability, or a disruption in the connection between any such server and the world wide web.

- (g) **Connection Redundancy:** NovaHost will ensure that at all times the Client's equipment is in connection with a service which maintains and provides connection redundancy to the internet to assist in ensuring a continual data connection to the World Wide Web.
- (h) **Onsite Access:** Client access to NovaHost's Systems must be with an approved NovaHost staff member and the Client must be escorted by an authorised NovaHost staff member at all times. Visits are by appointment only and are charged on an hourly basis.
- (i) **Infrastructure Upgrades:** From time to time, the NovaHost network may require upgrades and improvements. As a result, there may be some Downtime during these instances. In these instances, NovaHost will ensure the Client is notified of any possible service degradation or Downtime 48 hours prior to commencement of works. The Client then has 24 hours to notify NovaHost of any requests to postpone the works as it may interfere with the Client's business operations at the scheduled times of upgrades. NovaHost will endeavor to perform any upgrades out of Australian business hours, normally between the hours of 8pm EST and 6am EST;
- (j) **Service Credit:** In the event that the level of service outlined in these Terms in respect of Downtime is not met, NovaHost will issue a level of credit to the client as compensation of breaching these Terms. The amount will be determined as a percentage of overall costs minus the amount of non service defined from the time NovaHost confirms the fault as a legitimate fault until the time the fault is resolved. This credit will be issued at the discretion of NovaHost as a credit to payment of Service and is non transferable or redeemable including for cash or equipment.
- (k) **Service Level Definitions:** Under these Terms NovaHost measures its commitment based on the following performance criteria:

Service Availability

Description	<p>The availability of the following service item details;</p> <p>Co-location of industry standard equipment racks in the NovaHost data centre.</p> <p>Provision of 10A UPS protected power circuits to each equipment rack.</p> <p>Provision of 24 x 7 access to the NovaHost data centre for nominated personnel of the Client. The Client is responsible for advising any change of details in its personnel requiring access to the data centre.</p> <p>Continuity of power and air conditioning facilities.</p>
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Service Level	Uninterrupted use of the services described in above in the table.
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Fault Response Time

Description	The time it takes NovaHost to contact the Client to acknowledge a fault or inquiry.
Service Level	<p>In respect of a fault, the time taken for NovaHost to contact the Client to advise fault recognition and has sufficient information to investigate the fault.</p> <p>In terms of a general enquiry, the time taken for NovaHost to contact the Client to acknowledge the enquiry.</p> <p>For the split up of severity levels, their descriptions and the applicable response time please see 'Fault Resolution Priority' below. The Service level is measured by the severity scale it is in.</p>

(l) **Fault Resolution Priority**

Priority

Indicated severity of the fault and the indicated level of urgency for resolution

Fault Description

Defined nature of the fault

Response Time

The maximum amount of time NovaHost will commit to confirm with client that NovaHost is aware of the fault

Resolution Time

The maximum amount of time NovaHost will commit to resolve the fault or have an appropriate resolution in place

Priority	Fault Description	Response Time	Resolution Time
1	An existing service is 'down' or there is a critical impact to the Client's equipment operations.	1 Hour	3 Hours
2	Operation of an existing Service is severely degraded.	2 Hours	4 Hours
3	Operational performance of the Service is impaired while most business operations remain functional.	1 Business Day	1 Business Day
4	Client requires information or assistance of NovaHost product	2 Business Days	

	capabilities, installation or configuration. There is clearly little or no impact on the Client's business operation.		
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- (m) **Client Duties:** The Client shall document and promptly report all errors or malfunctions to NovaHost. The Client shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from NovaHost. The Client shall maintain a current backup copy of all programs and data.

4. BANDWIDTH USAGE & STORAGE

- 4.1. The Client elects a maximum amount of bandwidth to be used each month by the Client in respect of the Services. Similarly, the Client elects a maximum amount of storage space to be used by the Client on NovaHost's System. The bandwidth and storage is specified in the online order form during sign up. If the Client uses any bandwidth or storage space in excess of those amounts, NovaHost will charge the Client an additional fee.
- 4.2. The Client is responsible for any unauthorised access to the Services resulting in the bandwidth and/or storage usage exceeding the specified limits.
- 4.3. NovaHost charges excess bandwidth usage on incoming and outgoing traffic to the Client website. This does not include File Transfer Protocol (FTP) or email (SMTP/POP) data traffic.

5. CHANGE TO SERVICES

- 5.1. NovaHost reserves the right to change or modify the Services, these Terms, or any policy or guideline applicable to the Services, at any time in its sole discretion.
- 5.2. NovaHost will send a notice via email to the Client of any such changes and will post a notice of such changes on NovaHost's web site. Changes to these Terms or the Services will be effective fifteen (15) days after the notice is posted.
- 5.3. If the Client does not agree to any change to these Terms the Client's sole remedy is to immediately terminate these Terms pursuant to Clause 10 of these Terms.
- 5.4. The Client's continued use of the Services following NovaHost's posting of any changes to these Terms will constitute the Client's acceptance of such changes or modifications.
- 5.5. The Client may change Services under the Agreement by giving 7 days notice to NovaHost of the Client's intention to change Services, unless otherwise agreed and in writing between NovaHost and the Client.

6. VIRUS PROTECTION SOFTWARE/ANTI SPAM SOFTWARE

- 6.1. NovaHost's Systems is installed with anti virus software ("**Virus Protection Service**") and a spam filtering service ("**Spam Filtering Service**") is provided as an option with all Services.
- 6.2. The Client acknowledges and agrees that it is solely responsible for virus and spam protection, despite the Virus Protection Service and the Spam Filtering Service. By choosing to use the Services, the Client agrees to hold NovaHost faultless for any damages resulting from the use of the Spam Filtering Service and/or the Virus Protection Service.
- 6.3. The Client acknowledges that the Virus Protection Service will not detect viruses present in e-mails scanned by and transmitted via NovaHost's servers or that the Spam Filtering Service will prevent the transmission of all emails the Client considers as spam.
- 6.4. NovaHost makes no warranty that the Spam Filtering Service and the Virus Protection Service will be error free or free from interruption of failure and NovaHost expressly disclaims any express or implied warranty regarding the availability, accessibility, or performance of the Spam Filtering Service and the Virus Protection Service.
- 6.5. NovaHost reserves the right to remove attachments from incoming email messages if there is any indication that the attachment is or might be infected with a virus.
- 6.6. The Client acknowledges that some email may be made unavailable when using the spam filtering service and the virus protection service, and by requesting to use these services the Client assumes all liability for any lost or altered email.

7. CONTENT

- 7.1. "**Content**" means all content including code, data, text, metatags, multimedia information, the Client's domain name/s, e-mail, and that of any third party that are provided or permitted by the Client to reside on NovaHost's Systems.
- 7.2. The Client owns all copyright in the Content within the scope of the *Copyright Act 1968* (Cth).
- 7.3. The Client shall be solely responsible for all Content, including, without limitation, any content or materials of a third party or any content or material accessible by links to third party web sites, that the Client permits or enables to be posted onto or through NovaHost's Systems
- 7.4. The Client shall be solely responsible for the creation, posting, updating and maintenance of the Content and managing, renewing, creating, deleting, editing, maintaining and otherwise controlling or any in way dealing with the editorial content of the Content.
- 7.5. NovaHost will not be responsible for reviewing the Content prior to its posting by or on behalf of the Client and the Client acknowledges that NovaHost has no knowledge of the Content.
- 7.6. NovaHost will not be responsible for keeping and maintaining a current version of the Content.

- 7.7. The Client shall be entirely responsible for obtaining any insurance in relation to any loss or damage caused to or arising out of the Content.
- 7.8. NovaHost reserves the right to remove any of the Content at the sole discretion of NovaHost including if the Content is not compatible with NovaHost's Systems or if the Content is infringing any law.
- 7.9. Upon request from the Client, and at the Client's sole expense, NovaHost may assist the Client in resolving any compatibility problems on a time and materials basis in respect of the Content.

8. USE OF CONTENT

- 8.1. The Client shall at all times adhere to all applicable laws, rules and regulations in respect of the Content and any breach or alleged breach of any applicable laws, rules or regulations by the Client, at NovaHost's sole discretion, will entitle NovaHost to elect to terminate these Terms, without notice to the Client.
- 8.2. If NovaHost determines that the Client has breached or may have breached any applicable laws, rules or regulations, NovaHost may take whatever action it deems necessary including issuing a warning, immediately suspending or terminating the Services, restricting or prohibiting access to the Content that is objectionable or otherwise violates these Terms or disabling or removing hypertext links, any part of the Content or the content of any third party from NovaHost's Systems.
- 8.3. In the event that NovaHost takes action as provided under Clause 8.2, NovaHost shall not refund any payments made by the Client to NovaHost.
- 8.4. To comply with applicable laws, rules and regulations, any lawful governmental requests, to protect NovaHost's Systems and NovaHost's Clients, or to ensure the integrity and operation of NovaHost's business and systems, NovaHost may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, and the Content residing on NovaHost's Systems.

9. PAYMENT

- 9.1. The Client will be sent renewal notices for it to make payment of renewal fees as required. If the renewal fee is not paid by due date, the Services will be cancelled and the Client's Content, MX records and any other records or settings will be deleted without notice.

10. TERM OF SERVICE

- 10.1. These Terms shall remain in full force and effect until terminated by either party. Either party may terminate these Terms for any reason by providing the other party 30 days prior written notice unless otherwise provided in these Terms.
- 10.2. Upon any termination of these Terms, NovaHost will not refund, and the Client is not eligible for, any remaining portion of any payment that already has been made to NovaHost by the Client.

- 10.3. Should these Terms be terminated for any reason, NovaHost will not be liable to the Client because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with the Client's business, or for any other reason whatsoever flowing from such termination. The Client is solely responsible for procuring any new or replacement service upon termination. Any termination of these Terms shall not relieve the Client of any obligations to pay fees and costs accrued prior to the termination date and any other amounts owed by the Client to NovaHost as provided in these Terms.

11. WARRANTIES AND REPRESENTATIONS

11.1. The Client represents, warrants and covenants to NovaHost that:

- (a) the Content or its use shall not violate, misappropriate or infringe any rights including intellectual property, personal, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor shall same constitute a libel or defamation of any person or entity
- (b) the Content will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs
- (c) the Client has all right, power and authority necessary to enter into these Terms and use the Content as described herein
- (d) the Client shall comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws).

11.2. NovaHost does not make any representations or warranties of any kind, express or implied, with respect to the performance of the Services or NovaHost's Systems, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement or any implied warranty arising by usage of trade, course of dealing or course of performance, unless otherwise required by law. NovaHost makes no representations or warranties whatsoever that the Services and NovaHost's Systems will be uninterrupted, always accessible, free of harmful components, accurate or error-free.

11.3. NovaHost warrants that it will fulfil its obligations in these Terms to the best of its ability, care and skill.

LIMITATION OF LIABILITY

11.4. The Client will have access to a variety of third party sources of content through the use of the Client's web site and the Internet. NovaHost has made no effort to verify the accuracy or suitability of any information contained in any such sources, including, without limitation, any web site that the Client can link to from the Client's web site.

11.5. Accordingly, NovaHost has no liability or responsibility whatsoever for any content provided by any other person contained on or available through the Client's web site. The Client acknowledges and agrees that any access, use or reliance on any such third party content is at the Client's own risk.

- 11.6. The Client acknowledges that, except for information, products or services clearly identified as being supplied by NovaHost, NovaHost does not operate, control or endorse any information, products or services of any other person on the Client's web site or the Internet in any way.
- 11.7. The Client also acknowledges and agrees that NovaHost does not guarantee or warrant that files available for downloading from the Client's web site or through the Internet will be free of infection or viruses, worms, Trojan horses or other malicious code that may adversely effect the Client, the Client's computer or computer systems or the customer's data or files.
- 11.8. Except as otherwise expressly provided in these Terms or as required by law, NovaHost is not liable in any way if the performance of the Services and/or NovaHost's Systems is interrupted, not always accessible, not free of harmful components, inaccurate or not error-free.

12. INDEMNIFICATION

- 12.1. The Client will indemnify, hold harmless, and defend NovaHost and all employees, officers, directors and agents of NovaHost and any of its affiliates from and against any and all claims, suits, actions, demands or proceedings (whether threatened, asserted, or filed) and all related damages, losses, liabilities, cost and expenses (including, but not limited to, reasonable legal fees) arising out of or relating to:
- (a) any violation or breach by the Client of any term, representation or warranty, or policy of these Terms;
 - (b) the Client's unlawful or improper use of the Services
 - (c) any damages caused to NovaHost's Systems by the Content
 - (d) any actual or alleged violation of any rights, whether proprietary or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) by the Content.

13. BACK UP OF DATA

- 13.1. NovaHost will backup the Client's data onto backup mechanisms on a regular basis for the purposes of data recovery.
- 13.2. In the event of equipment failure or data corruption, NovaHost will restore from the last known good backup.
- 13.3. In the event of corruption of all of NovaHost's backups, or in the event that an old backup is used to restore data, the Client should be prepared to upload its data to its web site.
- 13.4. NovaHost will not be liable for incomplete, out-of-date, corrupt or otherwise deficient data recovered from NovaHost backups.

14. JURISDICTION

These Terms is governed by the laws applicable in the State of Victoria in Australia.

Signed for and on behalf of Client by:

.....
Print Full Name

.....
Position

.....
Signature

.....
Date

Signed for and on behalf of NovaHost by:

.....
Print Full Name

.....
Position

.....
Signature

.....
Date

End of NovaHost Leasing Agreement 2009