

Novanix, LLC Terms of Service

Novanix, LLC (“Novanix”) agrees to furnish remote services to you, which consist of the rental of disk space on Novanix’s server(s) or managing your own servers (the “Service”), subject to the following terms and conditions (the “TOS”). Use of the Service constitutes your acceptance of, and agreement to, these TOS as well as Novanix’s User Policy. Capitalized terms not defined in this TOS shall have the meaning ascribed to them in the User Policy. These TOS and/or the User Policy may be changed at any time by Novanix upon posting such changes to the Novanix “novanix.com” web site (the “Site”). Such changes shall become effective on the date of they are posted on the Site.

1. Service Rates: You acknowledge that Novanix has advised you fully of the nature of the various Services available from Novanix, as well as the applicable rates and charges associated with such Services (“User Fees”). You are aware and agree that Novanix may change any one or more applicable User Fees from time to time in its sole discretion. All such changes shall become effective upon posting the changes to the Site or informing you via electronic or written message.

Payment: Establishment of the Service, and continued access to the Service, are dependent upon receipt by the Novanix of full payment of all User Fees, and other fees, costs and expenses incurred by you under these TOS. For Monthly accounts, payments are due in advance on or before the first business day of each successive calendar month after initial set up.

2. Extra Payments and Fees: Service may be interrupted on all accounts that reach five (5) days past due. Service may be cancelled for cause on all accounts that reach ten (10) days past due. Service interrupted for nonpayment is subject to a \$250 reconnect charge. Accounts not paid by the due date may be subject to a \$10.00 late fee. Credit cards that are declined for any reason are subject to a \$1.50 declination fee. Accounts that are not collected by Novanix may be turned over to an outside collection agency for collection. If your account is turned over for collection, you agree to pay Novanix a Collection Fee of not less than \$100 nor more than \$200. Any other extra fees for any add-on or abuse must be paid in full.

3. **Refund and Disputes:** Except as expressly provided in these TOS, all payments to Novanix are nonrefundable. This includes the one time setup fee and subsequent User Fees regardless of your actual usage. All overcharges or billing disputes must be reported within sixty (60) days of the date the payment in dispute became due and payable. If you dispute a charge to your credit card issuer that, in Novanix's sole discretion is a valid charge under the provisions of these TOS, you agree to pay Novanix an "Administrative Fee" of not less than \$50 and not more than \$150.

4. **Account Cancellation:** All requests for canceling accounts must be made in writing and sent to Novanix via email at: [mailto: "cancel@novanix.com"](mailto:cancel@novanix.com). A five (5) day notice must be given for any account Cancellation. If any User Fees come due within the five (5) days following your notice of cancellation, such User Fees will still be charged.

5. **New Domain Accounts:** All new web hosting accounts involving new domains will be set up and entered into the DNS servers within three (3) to five (5) business days. Due to unforeseen complications, however, this process may sometimes require up to seven (7) business days. If the new domain is registered by the account holder, there will be no handling fee. If the domain is registered by Novanix on behalf of the account holder a handling fee of \$10 will be incurred.

6. **Transfer of Domains:** New web hosting accounts which involve the transfer of a domain from another provider to Novanix require a minimum of seven (7) days to be set up and entered into our DNS servers. In some cases, such transfers may take up to sixty (60) days. Due to the unpredictable nature of the transfer process, no guarantees are made regarding the amount of time a specific transfer may take. If you cancel Service during the transfer period for any reason, all charges are considered earned.

7. **Support Boundaries:** Novanix provides 24 x 7 technical support to our customers. We limit our technical support to our area of expertise. The following are our guidelines when providing support: Novanix provides support related to your virtual site physical functioning. Novanix does not offer technical support for application specific issues such as cgi programming, html or any other such issue unless directly specified. All support requests should be entered into our online tech support system to be properly handled. You also recognize that Novanix support can become backed up and some requests may take longer then others. Novanix makes no representation or guarantee as to response times and will not be held liable for a failure to timely respond regardless of any damage to you.

8. **SPAM and Unsolicited Commercial Email ("UCE"); Violation of Novanix User Policy; Violation of Law**

8.1 Novanix takes a zero tolerance approach to the sending of UCE or SPAM over our network. You may not use or permit others to use the network to transact in UCE. You may not host, or permit hosting of, sites or information that is advertised by UCE from other networks.

8.2 Violations of the SPAM or UCE policy carry severe penalties, including termination of service. Upon notification of an alleged violation of our SPAM or UCE policy, Novanix will initiate an immediate investigation (within 48 hours of notification). During the investigation, Novanix may restrict your access to the network to prevent further violations. If you are found to be in violation of our SPAM policy, Novanix may, at its sole discretion, restrict, suspend terminate, and or apply fees to your account. Further, Novanix reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. Novanix will notify law enforcement officials if the violation is believed to be a criminal offense. Novanix may also apply up to a \$100 charge per individual, organization, or email address that is sent such SPAM.

8.3 Novanix is under no duty to look at each your or your users' activities to determine if a violation of the User Policy has occurred, nor do we assume any responsibility through our User Policy to monitor or police Internet-related activities. A breach of the User Policy also constitutes a breach of these TOS.

8.4 The User Policy specifically prohibits the use of our service for illegal activities. Therefore, you agree that Novanix may disclose any and all your information including assigned IP numbers, account history, account use, etc. to any law enforcement agent or third party who makes a written or electronic request without further consent or notification to you. In addition Novanix shall have the right to terminate all Service under these TOS.

9. Network; Network Security

9.1 For all shared and reseller accounts you agree that bandwidth and disk usage shall not exceed the number of megabytes per month for the Services ordered by you on the Order Form (the "Agreed Usage"). Novanix will monitor your bandwidth and disk usage. Novanix shall have the right to take corrective action if your bandwidth or disk usage exceeds the Agreed Usage. Such corrective action may include the assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, which actions may be taken is in Novanix's sole and absolute discretion. If Novanix takes any corrective action under this section, you shall not be entitled to a prorated refund of any unused prepaid User Fees.

9.2 Users are prohibited from violating or attempting to violate the security of the Novanix network and agree to comply with the security provisions contained in the User Policy. Violations of system or network security may result in civil or criminal liability. Novanix will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users and/or subscribers who are involved in such violations. These violations include, without limitation:

- a) Accessing data not intended for such user or logging into a server or account, which such user is not authorized to access.
- b) Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.
- c) Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".

- d) Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
- e) Taking any action in order to obtain services to which such User is not entitled.

10. Sub-Networking and Reselling of Services is allowed on Certain Packages: Only gold and silver packages are allowed to resell any part of their account. All resellers are responsible for any of their users and clients activities. Both their users and clients must follow the TOS and AUP.

11. Suspension of Service or Cancellation; Refusal of Service: Novanix reserves the right to suspend network access to you for cause if in its judgment you are the source or target of the violation of any of the terms of the User Policy. If inappropriate activity is detected, all your accounts in question will be deactivated until an investigation is complete. Prior notification to you is not assured. In extreme cases, law enforcement will be contacted regarding the activity. Upon completion of the investigation, Novanix reserves the right at its sole discretion to refuse or cancel your Service for cause. You will not be credited for the time your machines were suspended, and accounts terminated due to policy violations will not be refunded. In addition, Novanix may suspend or cancel your Services and your rights under these TOS at any time, without cause or reason, without any further obligation or liability to you. However, if Novanix exercises this right, Novanix will provide you with a prorated refund of all unused prepaid User Fees.

12. Indemnification: You shall defend, indemnify, save and hold Novanix harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees asserted against Novanix, its agents, officers and employees, that may arise or result from any breach or action inconsistent with the TOS and/or User Policy, any Service provided or performed or agreed to be performed, or any product sold by you, your agents, employees or assigns. This includes your obligation to defend, indemnify and hold harmless Novanix against liabilities arising out of: (1) any injury to person or property caused by any products sold or otherwise distributed in connection with the Novanix server(s); and/or (2) any claim that material supplied by you or your users infringes any proprietary rights of a third party.

13. Disclaimer of Warranties; Limitation of Liability.

13.1 THE SERVICES PROVIDED BY NOVANIX ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS. NOVANIX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE NOVANIX SERVER. YOU EXPRESSLY AGREE THAT YOUR USE OF THE NOVANIX SERVER AND SERVICES IS AT YOU SOLE RISK.

13.2 NOVANIX DOES NOT WARRANT OR OTHERWISE GUARANTEE THE ABILITY OF ANY USER TO ACCESS YOUR WEB SITE, THE SPEED OF SUCH ACCESS TO THE WEB SITE, THE QUALITY OF THE CONNECTION TO THE SERVER, THAT ACCESS TO THE WEB SITE WILL BE UNINTERRUPTED, OR THAT THE OPERATION OF THE WEB SITE WILL BE FREE FROM ERROR. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NOVANIX DISCLAIMS, AND YOU HEREBY EXPRESSLY WAIVE, ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES, SITE, WEB SITE, SERVER AND/OR THE RESULTS OBTAINED FROM THEIR USE BY YOU, INCLUDING, WITHOUT LIMITATION, THE

IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13.3 You acknowledge that the Service provided is of such a nature that service can be interrupted for many reasons other than the negligence of the Novanix and that damages resulting from any interruption of service are difficult to ascertain. Therefore, you agree that Novanix shall not be liable for any damages arising from such interruption, or any loss of data resulting from delays. In no event shall the Novanix be liable to you, regardless of the form of action or theory of recovery, for any special, indirect, punitive, incidental, special or consequential damages, loss or injury. Novanix will not be responsible for any damages your business may suffer. In no event will Novanix be liable for damages in excess of the total User Fees paid by you for the Services for last six (6) months preceding the event giving rise to the claim.

14. Miscellaneous Provisions:

14.1 You must provide Novanix with, and keep current, good contact information for you. E-mail, fax, and telephone contacts are used, in that order of preference.

14.2 This Agreement shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules), and the federal laws of the U.S. The place of performance of this Agreement is Wayne County, Michigan. Any dispute between you and Novanix arising out of and/or relating in any way to the Site, Services, TOS and/or User Policy shall be submitted to confidential, binding and final arbitration pursuant to the provisions of the Federal Arbitration Act. The parties agree that such arbitration shall be conducted in the State of Michigan by the American Arbitration Association (“AAA”) in accordance with the then-applicable AAA Commercial Arbitration procedures. The arbitrator's decision shall be binding and judgment on the decision may be entered in the Circuit Court of the County of Wayne, Michigan, or the U.S. District Court for the Eastern District of Michigan, Southern Division. The parties waive any claim that such courts do not have personal jurisdiction over them or is an inconvenient forum. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party subject to this Agreement, whether through class arbitration proceedings or otherwise. Nothing in this Section shall limit or prevent a party from seeking injunctive and/or other judicial relief equitable relief pending the initiation, conduct and resolution of the arbitration procedures set forth in this Section. The institution, prosecution and/or defense of any such action shall not constitute a waiver by either party of the right to have the dispute through the arbitration procedures described in this Section. Any and all judicial proceedings arising out of and/or relating in any way to the Site, Services, TOS and/or User Policy shall be initiated and maintained in the Circuit Court of the County of Wayne, Michigan, or the U.S. District Court for the Eastern District of Michigan, Southern Division. The parties hereby irrevocably submit to the exclusive personal jurisdiction and venue in such courts for any such proceedings. The parties agree that these courts are convenient forums for any such litigation. Notwithstanding anything to the contrary in this Section, you expressly consent to the personal jurisdiction and venue of any court having jurisdiction over a third party action against Novanix, where Novanix seeks to join you in such action to seek contribution, indemnification or other remedies against you. Any such action shall not be subject to the mandatory arbitration provisions of this Section.

14.3 A waiver by the Novanix of any breach of any provision of this Agreement by you shall not operate as or be construed as a continuing or subsequent waiver thereof or as a waiver of any breach of any other provision thereof.

14.4 You shall not transfer or assign this Agreement without the prior written consent of Novanix. Novanix may assign Agreement at anytime without consent from or notice to you.

14.5 Novanix takes no responsibility for any material input by others and not posted to the Novanix Network. Novanix is not responsible for the content of any other websites linked to the Novanix Network; links are provided as Internet navigation tools only. Novanix disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person or party's violation of this policy.

14.6 The parties intend that an independent contractor relationship will be created by this contract, and that no partnership, joint venture or employee/employer relationship is intended.

14.7 Novanix currently does not allow you to link to or use IRC or IRC bots such as eggdrop, or any other on our servers.

14.8 Novanix does not allow illegal content of any type including copyrighted content. Novanix does not allow for the hosting of any pornographic content, mp3's, hacking software, cracking software, spamming software, or sites that link to these things. Novanix reserves the right to amend its policies, this TOS, and the User Policy at any time. Failure to follow any term or condition in this TOS and the User Policy shall be grounds for immediate termination.