

Terms of Service	Service Level Agreement	Acceptable Use Policy	Data Processing Agreement
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TERMS OF SERVICE

1. DEFINITIONS

Agreement: the agreement between CLIENT and NOVOSERVE, reflected by the TOS (including its Appendices).

Appendices: our Service Level Agreement (“SLA”)(Appendix 1), Acceptable Use Policy (“AUP”)(Appendix 2) and Data Processing Agreement (“DPA”)(Appendix 3).

Confidential Information: all information, written or oral, that is explicitly regarded as confidential by NOVOSERVICE and/or CLIENT or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. This includes, but is not limited to, business and marketing plans, technology and technical information, product plans and designs and business processes of a Party.

Client: the counterparty of NOVOSERVE, hereinafter referred to as CLIENT.

Data Center: a data center out of which or within which NOVOSERVE provides the Services.

End-users: customers of NOVOSERVE’s CLIENTS.

NOVOSERVE: the private company with limited liability NovoServe B.V., with its registered office at Hengelosestraat 201, 7521 AC, Enschede, the Netherlands, user of these Terms of Service, hereinafter referred to as NOVOSERVE.

Order: upon approval, therefore acceptance, in writing of by email by CLIENT or prospect a Quote shall be deemed an Order.

Quote: means any offer, quote, proposal and/or a tender bid made by NOVOSERVE. Quotes cease to apply after thirty (30) days from the date of the relevant Quote or any other period stated in the Quote.

Services: the services provided by NOVOSERVE to CLIENT as defined in the Quote.

TOS: these Terms of Service, including the Appendices.

Work: the provision of Services (defined below), without any relationship of subordination and employment or contracting of work.

2. APPLICABILITY OF THE TOS

1. The TOS are applicable to each online order, quotation, offer, and agreement between NOVOSERVE and CLIENT. Meaning, CLIENT unconditionally accepts the applicability of these TOS.
2. The applicability of conditions of CLIENT is explicitly excluded.
3. Any departures from these TOS are only applicable insofar as explicitly agreed upon in writing by NOVOSERVE and only apply to the specific agreement to which the departures relate.
4. In the event of uncertainties regarding the interpretation of one or more provisions of these TOS, the interpretation must be ‘in the spirit’ of the other provisions of the TOS.

3. FORMATION OF THE AGREEMENT

1. All Quotes are based on the information provided by CLIENT. If the aforesaid information appears to be incorrect or incomplete, CLIENT will be unable to derive any rights from an (accepted) Quote.
2. NOVOSERVE is not obliged to abide by its Quote if CLIENT can reasonably understand that the Quote, or parts thereof, contains an apparent error or mistake. NOVOSERVE shall be entitled to terminate or refuse an Order by giving written notice to CLIENT within seven (7) days of receiving such Order.
3. CLIENT is not entitled to sell and/or transfer the rights and/or obligations under the Agreement to a third-party without the prior written consent of NOVOSERVE.
4. NOVOSERVE is entitled to transfer its rights and obligations from the Agreement to a third-party without CLIENT’s permission.

4. EXECUTION OF THE AGREEMENT

1. All Services are provided based on a best-effort obligation, unless and insofar as NOVOSERVE has explicitly guaranteed a result in the Agreement.
2. If and insofar as required by proper execution of the Agreement, NOVOSERVE is entitled to have specific work carried out by auxiliary personnel and a third-party. If engaging a third-party, NOVOSERVE will exercise due care.
3. CLIENT will ensure that all information concerning which NOVOSERVE indicates that it is required or concerning which CLIENT can reasonably understand that it is required for the execution of the Agreement is made available to NOVOSERVE in time. The execution term does not commence until CLIENT has made the information available to NOVOSERVE.
4. CLIENT bears the risk of selecting, using, applying and managing the equipment, software, websites, data files, and other items and materials in its organization and the Services to be provided by NOVOSERVE. CLIENT itself is responsible for the correct installation and settings of the equipment, software, websites, data files, and other items and materials.
5. Suppose computer, data, or telecommunications facilities, including the Internet, are used to execute the Agreement. In that case, CLIENT will be responsible for the correct choice of resources needed to that end and the prompt and full availability thereof, except for those under the direct use and management of NOVOSERVE. NOVOSERVE will never be liable for losses or costs due to transmission errors, breakdowns, or the non-availability of these facilities unless CLIENT proves that these losses or expenses result from intent or gross negligence on the part of NOVOSERVE or its management.
6. All costs to be incurred by NOVOSERVE due to failure by CLIENT to fulfill the obligations as stated in this article, or failure to do so promptly and/or properly, will be at the expense of CLIENT.

5. DELIVERY AND RISK

1. NOVOSERVE reserves the right to reject the Order by giving written notice to Customer, within seven (7) days of receiving such Order upon NOVOSERVE's sole discretion, if CLIENT does not pass NOVOSERVE's Know Your Customer (KYC) Customer verification requirements.
2. All (delivery) terms and dates given or agreed by NOVOSERVE are, to the best of its knowledge, based on the information known to NOVOSERVE at the time the Agreement was concluded. The interim (delivery) dates given by NOVOSERVE or agreed between Parties are always target dates, do not bind NOVOSERVE and are provided for indicative purposes only.
3. NOVOSERVE will make every reasonable effort to honor the agreed and target(delivery) terms and dates as much as possible. NOVOSERVE is not bound by target (delivery) terms and dates, which can no longer be honored due to circumstances beyond its control.
4. The mere failure to honor a target (delivery) term or date, given by NOVOSERVE or agreed between Parties, does not imply that NOVOSERVE is in default.
5. If nonetheless NOVOSERVE is unable to meet its obligations within an agreed target deadline, NOVOSERVE can only be declared in default in writing, in which case NOVOSERVE will be granted a term of at least seven (7) days to remedy the situation.

6. KNOW YOUR CUSTOMER

1. The delivery of Services by NOVOSERVE to CLIENT and the therefore the execution of the Agreement is subject to Know Your Customer (KYC) verification requirements by NOVOSERVE in its sole discretion as a condition for the acceptance process outlined in Clause 5.1.

7. PRICES AND PAYMENT

1. For the use of the Services, CLIENT shall pay a recurring service charge to NOVOSERVE, as specified in the Quote (the "**Services Charges**"). In addition to the recurring Service Charges, NOVOSERVE may charge CLIENT non-recurring charges, as specified in the Quote.

2. All prices are exclusive of VAT, and exclusive of third-party (e.g., bank and (online) payment provider) payment (gateway) or transaction fees, and any other taxes or duties to be levied by the government. All prices are at all times stated in Euros and must be paid by CLIENT in that currency, unless otherwise agreed.
3. All cost estimates and budgets by NOVOSERVE are issued for indicative purposes only, unless expressed otherwise by NOVOSERVE in writing. CLIENT can never derive rights or expectations from cost estimates or budgets issued by NOVOSERVE.
4. NOVOSERVE has the right to change the rates charged to CLIENT. CLIENT will be notified of these changes by means of email and/or the website of NOVOSERVE, at least one (1) month before they take effect. CLIENT will be entitled to terminate the Agreement with effect from the day that the change takes effect, provided the price change represents an increase in price.
5. The payment obligation of CLIENT commences on the day the Agreement is concluded. Payments relate to the period that starts on the day on which the Services of NOVOSERVE become actually available (“ready for service date” or “RFS date”).
6. The RFS date should be confirmed by NOVOSERVE.
7. Payment must be made within fourteen (14) days of the invoice date (the “**Payment Term**”), in a manner to be designated by NOVOSERVE.
8. In the event of direct debit payments, CLIENT is obliged to ensure that its account balance holds sufficient funds.
9. In case CLIENT has a complaint with respect to an invoice, CLIENT shall communicate such complaint in writing to NOVOSERVE within the Payment Term. A complaint with respect to an invoice shall only be taken into consideration in the event that the complaint specifies the relevant invoice(s) and provides proper motivation for the complaint. In such case, Parties will use commercially reasonable efforts to resolve the dispute amicably within fourteen (14) days of NOVOSERVE’s receipt of CLIENT’s complaint. In the event Parties fail to resolve the dispute amicably within fourteen (14) days of NOVOSERVE’s receipt of CLIENT’s complaint, each Party shall be entitled to commence a dispute resolution in accordance with Clause 14.2.
10. If CLIENT fails to pay an invoice in time and/or in full, it will be in default by operation of law. In that case, NOVOSERVE shall, without a warning or notice of default being required, charge CLIENT interest on such sum on a daily basis on the basis of the statutory interest rate plus two (2) percent, without prejudice to NOVOSERVE’s other rights and remedies. The interest on the amount payable is calculated from the moment CLIENT is in default, until the moment that the amount owed has been paid in full.
11. In the event, CLIENT is in default or fails to (timely) fulfill its (payment) obligations, all costs incurred to collect payment and/or to have CLIENT fulfill its obligations under the Agreement, will be at the expense of CLIENT. This includes but is not limited to all extrajudicial and legal expenses made by NOVOSERVE.
12. CLIENT is never entitled to set off any amounts owed to NOVOSERVE. Objections to the amount of the invoice do not suspend the obligation to pay.

8. TERM AND TERMINATION OF AGREEMENTS

1. The Agreement enters into force upon the acceptance of the Client of the TOS (the “**Effective Date**”). Any agreement signed and executed between Parties before the Effective Date will expire upon the Agreement coming into force.
2. The Agreement is entered into for a fixed period of time (the “**Initial Term**”), unless the nature or essence of the instruction given dictates an indefinite period of time.
3. At the end of the Term, the Agreement shall be renewed for successive terms equal to the Initial Term (the “**Renewed Term**”), unless either Party notifies the other in writing that it does not agree to a renewal of the Agreement, considering a notice period of at least:
 - a. One (1) business day, in the event of a Term of one (1) month or longer;
 - b. One (1) calendar month, in the event of a Term of twelve (12) months or longer.
4. A fixed-term Agreement cannot be terminated prematurely, unless in the event of a Force Majeur Event, as a result of which CLIENT or NOVOSERVE can no longer be reasonably required to continue to perform the Agreement or carry out the instruction. The other Party must be notified of this in writing, supported by reasons.
5. The CLIENT remains obligated to pay to NOVOSERVE, in full, the agreed-on fee, if CLIENT, prematurely, has fully or partially terminated the Agreement in accordance with the clause 8.4 or with mutual approval from Parties.
6. NOVOSERVE is entitled to (partially) suspend fulfillment of its obligations or to dissolve the Agreement, if:

- CLIENT fails to fulfill its obligations under the Agreement, or fails to do so in full or in time;
 - CLIENT violates the Acceptable Use Policy (**Appendix 3**)("AUP").
 - after conclusion of the Agreement, NOVOSERVE, on the basis of information it has become aware of, has good reason to fear that CLIENT will not be able to fulfill its obligations;
 - due to delays on the part of CLIENT, NOVOSERVE can no longer be required to perform the Agreement under the conditions agreed initially.
7. In the event NOVOSERVE has suspended the fulfillment of its obligations under the Agreement due to CLIENT failing to pay an invoice on time or in full, NOVOSERVE is entitled to levy a fee of 15% of the total outstanding invoice amount in addition to the total outstanding invoice amount and the statutory interest due in order to reactivate its obligations under the Agreement. Reactivation will take place following payment by CLIENT of the additional fee and the total outstanding invoice amount and the statutory interest due.
 8. If the progress in the execution or completion of the Work is delayed due to default by CLIENT or a Force Majeure Event on the CLIENT'S part, NOVOSERVE will be entitled to charge the agreed amount in full, without prejudice to its right to demand further compensation of costs, damages and interests. Within the context of this Agreement, a "**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including but not limited to failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections and power failures).
 9. Upon termination of the Agreement:
 - a. NOVOSERVE shall cease to provide all Services;
 - b. NOVOSERVE shall, subject to NOVOSERVE'S Privacy Notice, be entitled to erase and delete all data of CLIENT – and any and all data of End-users – from NOVOSERVE'S equipment;
 - c. NOVOSERVE shall be entitled to make the equipment available for use by other CLIENTS;
 - d. Any claims NOVOSERVE has against CLIENT become immediately due and payable upon termination of the Agreement
 - e. CLIENT is not eligible to any form of refund for paid.
 10. If NOVOSERVE terminates CLIENT's Services during the Initial or Renewed Term due to a violation of the Acceptable Use Policy (**Appendix 3**) by CLIENT, CLIENT shall pay to NOVOSERVE, as liquidated damages and not as a penalty, an amount equal to the sum of 100% (one hundred percent) of the total amount of Service Charges that would have become due during the period from the effective termination date to the expiration date of the Initial or Renewed Term ("**Termination Charge**").
 11. CLIENT shall pay the Termination Charge to NOVOSERVE within five (5) business days of the termination date. CLIENT'S payment of the Termination Charge shall not prevent or limit NOVOSERVE from pursuing any and all other available remedies against CLIENT.
 12. If NOVOSERVE terminates CLIENT's Services during the Initial or Renewed Term, due to a violation of the Acceptable Use Policy by CLIENT, CLIENT is not eligible for a refund whatsoever in a situation in which CLIENT paid a Service Charge for that specific terminated Service.

9. LIABILITY

1. In the event of an irregularity due to CLIENT providing incorrect or incomplete information, NOVOSERVE will not be liable for any damage or losses arising from it.
2. In the event of liability, NOVOSERVE can only be held liable for direct damage. NOVOSERVE will not be liable for direct, indirect and/or consequential damage or losses (including, but not limited to, lost profits, losses due to business interruptions, loss of relations due to delays and otherwise, loss of data and goodwill, late deliveries and/or defects), other than the direct financial loss incurred by the NOVOSERVE.
3. NOVOSERVE cannot be held liable for costs and/or damages as a result of corruption, destruction or loss of files and data of CLIENT. CLIENT is responsible for making readable backups and the permanent storage thereof.
4. The liability of NOVOSERVE on account of attributable failure to perform an Agreement arises only in a situation where CLIENT has given NOVOSERVE immediate and proper notice of default, allowing for a reasonable period to remedy the breach.
5. CLIENT is obliged to notify NOVOSERVE, in writing, within one (1) month of CLIENT having identified an irregularity in the execution of the Agreement and the possible risk of damage. If the notification referred to in

this clause is not sent or sent too late, NOVOSERVE will not be obliged to reimburse CLIENT for any damages incurred in any way.

6. If NOVOSERVE is nevertheless liable in any case, this liability is limited to the total amount of fees paid by CLIENT to NOVOSERVE during the calendar year in which the liability causing event took place.
7. Nothing in these TOS will exclude or limit our liability if this cannot be excluded or limited under the applicable law.

10. FORCE MAJEURE

1. If a Force Majeure Event gives rise to failure or delay in either Party performing any obligation under the Agreement, the Party whose performance of its obligations under the Agreement is affected by the Force Majeure Event shall promptly notify the other Party.
2. NOVOSERVE shall be authorized to suspend the Services fully for the duration of the Force Majeure Event. In case of suspension of services by NOVOSERVE attributable to a Force Majeure Event, NOVOSERVE shall never be liable for any damages of CLIENT nor shall NOVOSERVE be obliged to repay CLIENT a proportional part of the fee paid by CLIENT to NOVOSERVE for the Services. NOVOSERVE shall resume its services as soon as possible.

11. COMPLAINTS

1. Notwithstanding clause 7.8, any complaints, either in respect of Services provided and/or Work completed and/or matters such as invoice amounts must be submitted, in writing or by email, to NOVOSERVE within seven (7) days after the event causing the complaint took place, providing an accurate breakdown of the facts which, the complaint relates to.
2. Complaints that have been submitted but which do not meet the above conditions are not processed and CLIENT will be deemed to have approved and accepted the delivery of Services.
3. Submitting a complaint does not give CLIENT the right to suspend the fulfilment of its obligations towards NOVOSERVE.
4. NOVOSERVE will only be obliged to process complaints, if the relevant CLIENT, at the time of submitting its complaint, has fulfilled all its obligations towards NOVOSERVE, arising from any commitment between CLIENT and NOVOSERVE.

12. CONFIDENTIALITY AND PERSONNEL

1. Parties acknowledge that, in connection with this Agreement, each Party (the "**Receiving Party**") may obtain Confidential Information of the other Party (the "**Disclosing Party**"). Such Confidential Information will not be used or disclosed by the Receiving Party except as specifically authorized in writing, or as necessary to perform the Services.
2. Confidential Information will by all means be considered confidential if any one of the Parties indicates it as such.
3. In no event shall CLIENT use NOVOSERVE's Confidential Information to reverse engineer or otherwise develop products or services functionally equivalent to the Services of NOVOSERVE.
4. The foregoing obligations shall survive any termination or expiration of this Agreement.
5. During the term of the Agreement, as well as up to one (1) year after termination thereof, neither Parties will hire or employ personnel from the other Party, unless the other Party has granted its prior written approval.

13. INTELLECTUAL PROPERTY AND PENALTY

1. Subject to Clause 13.3 below, CLIENT will continue to own all rights to designs, programs, documentation and other material developed and/or used for the preparation or implementation of the Agreement that were in existence and owned by CLIENT before the Effective Date.
2. Subject to Clause 13.3 below, NOVOSERVE will continue to own all rights to products and/or services, designs, programs, documentation and other material developed and/or used for the preparation or implementation of

the Agreement that: (a) were in existence and owned by NOVOSERVE before the Effective Date; or (b) were made or discovered by NOVOSERVE after the Effective Date.

3. CLIENT hereby grants to NOVOSERVE a non-exclusive, royalty free, unlimited license, during the term of the Agreement, to use CLIENT property, as referred to in Clause 13.1, as necessary for performing the Services under this Agreement.
4. Violation of the provisions of Articles 12 and 13 of the TOS will result in CLIENT being liable to pay a penalty of € 5,000 (five thousand Euros) for each offence and/or for each day or parts thereof that CLIENT remains in default, without prejudice to the remaining rights that NOVOSERVE may exercise.

14. GOVERNING LAW

1. The laws of the Netherlands govern the Agreement and all matters arising therefrom or connected therewith.
2. The competent court, of Overijssel, the Netherlands shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Agreement or other agreements or other legal relationships resulting therefrom.
3. NOVOSERVE is entitled to unilaterally amend (part of) the Agreement and its supporting documentation. Such amendment also applies to existing Services, unless NOVOSERVE stated otherwise. The amendment comes into effect with an announcement or on a later date stated in the announcement. The latest version of the TOS applies to the relationship between NOVOSERVE and CLIENT.

15. CONTACT NOVOSERVE

To ensure that the mutual commitment will result in a sustainable relationship, NOVOSERVE will do its utmost to be as transparent as possible. Contact NOVOSERVE should any questions arise after reading this document. NOVOSERVE's address is: NovoServe B.V., Hengelosestraat 201, 7521 AC, Enschede, the Netherlands. Email: sales@novoserve.com. Telephone: +31 (0) 88 668 62 53. To learn more about NOVOSERVE, please visit <https://www.novoserve.com/>.