

# **Novus Call Centers Standard Terms and Conditions**

Updated: February 25, 2011

This is an agreement (“Agreement”) for LIVE Receptionist and enhanced telecommunication services (“Service”) between you (“CLIENT”) and Novus Call Centers (“NOVUS”) relating to your assigned Novus account number (“Number”) and Service. Any of the following actions constitutes your agreement, without limitation or qualification, to be bound by, and to comply with, the terms of this Agreement: (i) your initialization of the Service, either on the telephone or web page, through the use of your Number (ii) your registering for Service on our Web page and selecting “I Accept” as part of the registration process, (iii) ordering Service from our sales personnel, whether in person or by phone, and providing them or our accounting department or automated credit card service with your credit card number and billing information.

1. **Term.** The term of this Agreement for any service begins on the date NOVUS charges the CLIENT credit card for any service. This Agreement will continue from month to month until terminated by the CLIENT with 30 days written notice, or NOVUS for reasons defined below. Initial set up date determines monthly or annual billing cycle.

2. **Use of Service and Account Number.** The CLIENT agrees not to use the Service for any unlawful/illegal or abusive purpose or in any way which interferes with our ability to provide Service to our subscribers, or damages our property. Resale of services, transfer account number, or any part thereof, is prohibited without prior contractual arrangements with NOVUS and/or any required regulatory approvals. As set forth below, you have no ownership rights to the Service or to the account Number; we may change your Number at any time by giving you notice. If your Service is fraudulently used, you must immediately notify NOVUS. NOVUS has the right to interrupt or restrict Service to your Number, without notice to you, if, NOVUS suspects fraudulent or abusive activity. You agree to cooperate with NOVUS in any fraud investigation. Upon termination of the Service CLIENTS right to use the Service immediately ceases. CLIENT shall have no right and NOVUS will have no obligation thereafter to forward any unread or unsent messages to Customer or any third party.

3. **Charges.** The CLIENT represents and warrants that you are at least 18 years of age and that you possess the legal right and ability to enter into this Agreement. You agree that you are responsible for paying all charges to your account for Service promptly, to keep your account in good standing, and that all charges not disputed in writing within 30 days of invoice date will be paid by you. CLIENT Numbers are charged monthly or annually for the quantity of in-bound calls **up to** monthly call plan limit and CLIENTS have the responsibility to be aware of their Call Volumes. NOVUS contracts to provide LIVE Receptionist Service for the quantity of calls purchased in the plan, and any calls beyond plan agreement will be automatically sent to the CLIENTS after-hours destination if CLIENT has not contacted NOVUS for upgrading or approving automatic call volume upgrades. CLIENT may pre-purchase Add-ons calls in blocks as found on the website, [www.novuscall.com/pricing](http://www.novuscall.com/pricing), as needed to increase LIVE Receptionist Services call volume. NOVUS will provide tools for tracking account activity and will notify CLIENT billing

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contact via electronic mail that they are approaching their call limit and again when CLIENT is over the monthly limit. Unused Services are not carried over from month to month. NOVUS does not and will not charge per single minute or single call. You will be charged each month for the amount of the call plan limit and/or Add-ons whether that amount of calls is answered or not.

4. **Billing and Payment.** Monthly charges for SERVICES and any other applicable charges are billed in advance on the first day of the CLIENTS billing cycle (determined by initial set up date). Payment of all charges is due upon receipt of invoice and will be billed automatically. Once the CLIENT has authorized the first payment by credit card or electronic check, no additional notice or consent will be required for billings to that credit card or account. Accounts paid by Automatic Payments will be processed the same day invoiced. Add-ons will be invoiced and billed automatically at the same time as regular monthly charges, unless client terminates the requested Add-on in writing. CLIENT is responsible for updating changes to payment information on file, such as account number or expiration date changes. The CLIENT agrees to be responsible for all charges on any credit card provided to NOVUS and agrees to immediately reimburse NOVUS for any charges denied or charged back. The CLIENT agrees to handle all billing disputes and refund requests directly with NOVUS. For late payments (those made beyond 5 days past due) a fee of twenty dollars (\$20) may be added to the Invoice. Novus may assess an additional fee of fifty dollars (\$50) for any check returned for nonpayment or chargeback initiated on your behalf. Notice of any disputes must be in writing and received by NOVUS within thirty days after the invoice date or you will waive any objection.

5. **Default/Termination.** If the CLIENT fails to pay any amount owed after the due date it is in the sole discretion of NOVUS to modify call routing instructions. Accounts that are past due (more than 5 days late but less than 30 days late) will be immediately routed to the CLIENTS default after-hours destination as specified by the CLIENT. Services for an Account not in good standing will be suspended within 7 days of billing cycle, unless entire outstanding balance is paid in full (An account not in good standing is defined as late payments for 2 consecutive months). NOVUS may with or without prior notice suspend, restrict Service, and/or terminate this Service or this agreement, in addition to all other remedies available to NOVUS. NOVUS may require a reactivation charges and/or deposit to renew Service after termination or suspension. Upon termination, the CLIENT is responsible for paying all amounts and charges owing under this Agreement. The CLIENT agree to pay all costs including attorney's fees, collection costs and court costs we incur in enforcing this Agreement.

6. **Account Changes.** The CLIENT may change Service features or Service plan by notifying us and paying the standard charges. Changes will take effect immediately. Only the CLIENT or person designated by the CLIENT will be able to make changes to the account.

7. **Ownership of Services and Account Number.** The CLIENT understands and agrees that you are not the owner of any telephone number assigned to you by NOVUS. Ownership of any such phone number

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is vested solely in those who provide these Numbers to NOVUS (who will assign such numbers to the CLIENT for your use during the term of this Agreement). Following the termination of your service for any reason you will no longer have access to such number. In either case, such phone number may be re-assigned to another subscriber and you agree that NOVUS will not be liable for damages (including consequential or special damages) arising out of any such re-assignment and you hereby waive any claims with respect to any such re-assignment, whether based on contract, tort or other grounds, even if NOVUS has been advised of the possibility of damages. You, the CLIENT, may in writing request that your number and be ported to an alternate carrier with management approval. Each phone number re-assigned to a new carrier will be charged a \$25 processing fee.

8. **Modification; Assignment.** NOVUS may change or modify this Agreement from time to time. Any such change will be made in good faith, and copies of changes will be sent within 5 days, via email. If you do not agree to the change, you may terminate this Agreement by giving us written notice within 15 days of any receipt of agreement change.

9. **NO WARRANTIES.** THE SERVICES ARE PROVIDED "AS IS." WE MAKE NO WARRANTIES REGARDING THE SERVICE WHATSOEVER AND EXPRESSLY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT

10. **LIMITATION OF LIABILITY.** NOVUS SHALL NOT BE HELD LIABLE IF NONPERFORMANCE OR FAILURE OF THE SERVICE IS CAUSED BY ACTS OR OMISSIONS OF ANOTHER SERVICE PROVIDER, EQUIPMENT OR SOFTWARE FAILURE OR MODIFICATION, TELECOMMUNICATIONS OR COMPUTER EQUIPMENT FAILURES, ACTS OF GOD, OR OTHER CAUSES BEYOND OUR REASONABLE CONTROL. NOVUS ASSUMES NO LIABILITY FOR SERVICE OUTAGES OR FOR FAILURE TO STORE, DELIVER ANY INFORMATION, MESSAGES OR CONTENT. IN NO EVENT SHALL THE LIABILITY OF NOVUS TO THE CLIENT FOR ANY REASON EXCEED THE SERVICE CHARGES DURING THE AFFECTED PERIOD GIVING RISE TO SUCH LIABILITY. NOVUS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE OR CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS, EVEN IF NOVUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE SERVICE, RELIANCE ON THE SERVICE, INABILITY TO USE THE SERVICE, OR FROM THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SERVICE. WE SHALL NOT BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY ARISING FROM USE OF THE SERVICE, OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICE. THE CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS NOVUS AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, EMPLOYEES AND ANY UNDERLYING CARRIER, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, EXPENSES OR DAMAGES (INCLUDING ATTORNEYS' FEES), WHETHER KNOWN OR UNKNOWN, ARISING FROM (A) THE CLIENTS USE OF THE SERVICE, (B) ANY OTHER PERSON'S USE OF ANY ACCOUNT OR PIN THE CLIENT MAINTAINS, REGARDLESS OF WHETHER SUCH USE IS AUTHORIZED BY THE CLIENT, OR (C) THE CLIENTS PROMISES OR STATEMENTS

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MADE IN THIS AGREEMENT. THE CLIENTS AGREE TO PAY THE REASONABLE ATTORNEYS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN ENFORCING THIS AGREEMENT THROUGH ANY APPEAL, BY NOVUS. THE CLIENT HEREBY AGREES TO WAIVE ALL LAWS THAT MAY LIMIT THE EFFECTIVENESS OF THE FOREGOING RELEASES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE CLIENT BE LIABLE FOR CLAIMS, EXPENSES OR DAMAGES ARISING FROM THE INTENTIONAL OR NEGLIGENT ACTS OF NOVUS OR ITS EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

11. **EMERGENCIES**. IN THE EVENT OF AN EMERGENCY WHILE USING YOUR SERVICE - HANG UP AND DIAL "911."

12. **Force Majeure**. Either party shall be excused from any delay or failure in performance hereunder, other than the payment of moneys, caused by reason of occurrence or contingency beyond its reasonable control, including without limitation, acts of God, earthquake, fire, flooding, riots, war or government requirements.

13. **Privacy**. Novus' Privacy Policy is set forth on the NOVUS Web Site ([www.Novuscall.com](http://www.Novuscall.com)). In addition, the CLIENT authorizes NOVUS' monitoring and recording of your calls to NOVUS concerning your account or the Service and the CLIENT consents to our contacting you from time to time by means of (a) automatic dialing equipment, or (b) your Service voicemail box.

14. **Notices**. Notices to you, the CLIENT shall be effective when sent by email to the email address provided to NOVUS. Written notice to NOVUS shall be effective when directed to our Customer Care Department and received at 555 South Main St. Suite 201, Orem, UT 84058. Any notice from the CLIENT to NOVUS shall be sent by email or US mail and must specify the CLIENTS name and Number.

15. **General Information**. THE LAWS OF THE STATE OF UTAH, U.S.A., EXCLUDING ITS CONFLICTS-OF-LAW RULES, GOVERN THIS AGREEMENT AND THE CLIENTS USE OF SERVICES, AND YOU EXPRESSLY AGREE THAT THE EXCLUSIVE JURISDICTION FOR ANY CLAIM OR DISPUTE ARISING FROM THE USE OF THE NOVUS SERVICES RESIDES IN THE STATE AND FEDERAL COURTS OF THE STATE OF UTAH, U.S.A. AND THE CLIENT CONSENTS TO SAID PERSONAL JURISDICTION IN SUCH COURTS WITH RESPECT TO ALL SUCH CLAIMS OR DISPUTES. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect. This Agreement constitutes the entire agreement between NOVUS and the CLIENT with respect to your use of NOVUS Services, and it supersedes all prior or contemporaneous written communications and proposals between NOVUS and you with respect thereto. The failure of NOVUS to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or

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provision. In accordance with the Digital Millennium Copyright Act, it is the policy of NOVUS to terminate, in appropriate circumstances, the Service of any CLIENT who is a repeat infringer. However, NOVUS reserves the right to terminate or suspend the Service of the CLIENT for only a single infringement, and may or may not, in Novus' sole discretion; attempt to contact such clients prior to such termination or suspension.