

NOOBEH, LLC'S TERMS, CONDITIONS AND SERVICE LEVEL AGREEMENT

1. Introduction

These Terms and Conditions are an integral part of the Order for Services (the "Order") by and between Noobeh and the Client (as defined in the Order (the "Parties" collectively, or each "Party") and shall be deemed accepted by, and binding upon, Client in accordance with the terms of the Order. These Terms, Conditions and Service Level Agreement (the "Agreement") are subject to change upon notice to Client as set forth in Section 13(c) herein (the "Notice").

2. Services

Noobeh shall provide to Client the Services set forth in the Order (the "Service" or "Services").

3. Term

The term of each Service shall be governed by the Order.

4. Rates and Charges

- a. Fees are charged for Client's use of Noobeh services. Noobeh charges fees, including account setup fees, installation fees, subscription and other service fees where applicable to the services. Fee schedules may change without notice; however, unless Client has a term-committed rate, Client rates are subject to change upon thirty (30) days' Notice. Noobeh may charge a non-refundable set up fee as well as periodic subscription service fees. Fees apply from the time Client places an Order with Noobeh pursuant to the applicable Services ordered.
- b. Client agrees to pay the rates and charges for Services set forth in the Order using the calculations set forth in the Order or these Terms and Conditions, as applicable.
- c. Services are billed monthly unless otherwise stated in the Order.
- d. Upon service termination, a final charge will be processed to cover any residual billing, prorated 30 days from date of service termination or the equivalent of one month service fee.
- e. *Promotional Rates* Noobeh reserves the right to offer promotional rates which may be more favorable than the terms under which Client entered this Agreement. Any such rate changes shall not affect the then existing rights and responsibilities of each Party. Promotional offers and rates may not be combined. Accounts in arrears are subject to revocation of any or all discounts at Noobeh's sole discretion.
- f. *Taxes* All charges are exclusive of applicable taxes, and surcharges, which Client agrees to pay.

5. Payment

- a. Unless otherwise stated in the Order, Client must remit payment to Noobeh for the full amount indicated in the invoice on or before the due date printed thereon ("Due Date"). Payments must be made at the address designated on the invoice or such other place as Noobeh may designate. Client must not place any condition or restrictive legend, such as "Paid in Full," on any check or instrument used to make a payment. The negotiation

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of any such check or instrument so inscribed shall not constitute an accord and satisfaction or novation, and Client waives its right to assert any such defense. Client acknowledges and agrees that Noobeh shall not perform any services until Noobeh receives Client's initial payment as per the terms stated in the Order.

- b. Prior to providing any Services or performing any activities associated with any Order and thereafter, Client must remit payment in electronic form via credit card or ACH. Noobeh may therefore require Client to complete and return a Credit Card or ACH Authorization Form. Receipt of this completed form by Noobeh is required in order to complete placement of any initial Order by Client and provides Noobeh with Client's authorization to charge the payment method for services delivered under this Agreement and as described in the Order placed by Client with Noobeh. If for any reason the credit card or bank transfer information Client provided is insufficient to pay any fees at the commencement of any service period, Noobeh, at its sole discretion, will have the right to suspend and/or terminate your account as provided in Section 7 below. Refusal or rejection of any charge or any portion thereof may result in Service suspension and/or Account termination at the sole option of Noobeh.
- c. Client shall reimburse Noobeh for all agreed upon expenses as invoiced by Noobeh.
- d. Any amount not paid on or before the Due Date, shall result in suspension or termination of Noobeh's services as indicated in Section 7(b) herein.

6. Billing Disputes

- a. If Client disputes charges or application of taxes, Client must give Noobeh written notice of such dispute within ten (10) days of the date of the invoice. If notice of a dispute is not received by Noobeh within the foregoing ten (10) day period, such invoice shall be deemed to be correct and binding on Client. Notwithstanding the foregoing, if any charges are reasonably disputed by Client, such charges shall not be due and payable for a period of ten (10) days following the Due Date, provided Client: (i) pays all undisputed charges on or before the respective Due Date, (ii) presents to Noobeh on or before the respective Due Date a detailed written statement disputing such charges which statement shall include but is not limited to, documents concerning the disputed billing discrepancies, and (iii) negotiates in good faith with Noobeh for the purpose of resolving such dispute within said ten (10) day period. If Client does not pay any or all of the undisputed charges, Noobeh shall have the right to exercise its remedies as described in Section 7(b). Nothing contained herein shall limit Client's right to dispute amounts at any time following the applicable Due Date, however, Noobeh shall not be obligated to consider any notice of disputed charges that it receives more than fourteen (14) days following the Due Date of the respective invoice.
- b. Each Party agrees to negotiate in good faith for the purpose of resolving any properly raised dispute(s) relating to the Client's invoice, subject to the following:
 - i. if the dispute is mutually agreed upon and resolved in favor of Noobeh, Client agrees to pay Noobeh the disputed charges within seven (7) days of resolution;

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- ii. if the dispute is mutually agreed upon and resolved in favor of Client, Client will receive a credit for the disputed charges on its next invoice; and
- iii. if Noobeh has responded to Client's dispute in writing and the parties fail to mutually resolve or settle the dispute within the prescribed fourteen (14) day period (unless Noobeh has agreed in writing to extend such period), all disputed amounts shall be immediately due and payable.

7. Termination

a. Termination for Cause.

Either Party may terminate the Services for cause. Except for failure to pay as specifically provided in Section 7(b) below, "Cause" shall mean a material breach by the other party of any material provision of the Order, provided that written notice of the breach has been given to the breaching party and the breach has not been cured within fourteen (14) days after delivery of such notice.

b. Termination by Noobeh.

In the event Client fails to pay an invoice by the Due Date, Noobeh may issue a notice of default. If Client has not fully paid all undisputed invoices within seven (7) days of the default notice, such nonpayment shall be considered "Cause" for termination, and Noobeh may terminate the Services. In addition, Noobeh may suspend or terminate the Services immediately upon notice to Client if, as determined by Noobeh in good faith, Client provides false information to Noobeh regarding the Client's identity, or Client's use of the Services in violation of the Terms of Use and Acceptable Use as provided in Section 8 below. Suspension of the Services shall specifically include the disabling of Client's cloud services and/or any access to information or data related to the Client's account until such time that Client's account is paid in full or if violation of the use of Services is cured to Noobeh's satisfaction. Service charges shall continue to accrue on suspended accounts and the Client shall continue to remain responsible for the payment of any such charges during the period of suspension.

c. Termination by Client.

No refunds of any fees will be provided to Client. Client may terminate the Services provided that Client gives Noobeh advanced written notice of:

- i. At least 30 days for termination of any Services subscribed as month-to-month; and/or
- ii. At least 60 days for termination of any Services subscribed as annual commitment for single or multiple years are billable for the entire length of the Service subscription.

Notwithstanding the foregoing, subscriptions terminated for noncompliance or nonpayment require payment in full upon notice of termination.

d. Collection of Past Due and Unpaid Balances

All past due and unpaid balances are subject to collection through collection agencies. In the event of such collection action, Client shall be liable for all costs of collection including but not limited to

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attorney's fees, court costs, and collection agency fees. Once Client's account has been submitted to a collection agency for collection, Client shall additionally be subject to a \$200.00 administrative fee which must be paid by Client prior to re-activation of Client's account or activation of a new account requested for Client's use.

8. Terms of Use and Acceptable Use

- a. Client's use of the Services is subject to the Noobeh's terms of acceptable use. Noobeh strictly enforces Client's compliance with the terms set forth herein and as described in the Microsoft *Online Services Terms (OST)* and *Service Level Agreements for Microsoft Online Services (SLA)*. In the use of Services provided by Noobeh, Client agrees to the following:
 - i. Client shall not violate the laws, regulations, ordinances of any applicable federal, state or local government;
 - ii. Client shall not take any action which encourages or consists of any threat of harm of any kind to any person or property;
 - iii. Client shall not attempt any unauthorized access to any Noobeh services, participate in the unauthorized use of any account of any Noobeh customer, or disclose any such service or account information without proper authorization;
 - iv. Client shall not attempt to install any software or introduce any files on any Noobeh service or system without prior authorization and specific permission from Noobeh;
 - v. Client shall not make any inappropriate, illegal or otherwise prohibited communication to any list, group, chat, social network, forum or other platform;
 - vi. Client shall not transmit any unsolicited commercial or bulk email, shall not engage in any activity known or considered to be spamming, and shall not initiate or participate in any form of attack or intrusion on any website or service;
 - vii. Client shall not engage in any activity of any kind that causes or is likely to cause harm to minors;
 - viii. Client shall not infringe any copyright, trademark, patent, trade secret, or other proprietary rights of any third party including but not limited to unauthorized copying of copyrighted material, digitization and distribution of photographs from magazines, books, or other copyrighted sources, and unauthorized transmittal of copyrighted software;
 - ix. Client shall not collect or attempt to collect, publicize, or otherwise disclose personally identifiable information of any person or entity without their express consent or as otherwise required by law;
 - x. Client shall not undertake any action which is harmful or potentially harmful to Noobeh business, customers, infrastructure or services;

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- xi. Client is prohibited from violating or attempting to violate the security of the Noobeh, including without limitation, (a) accessing data not intended for Client or logging into a server or account which Client 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, or (e) taking any action in order to obtain services to which Client is not entitled.;
- xii. Client's violation of system or network security may result in civil or criminal liability, and Noobeh will investigate occurrences that may include such violations and may cooperate with law enforcement authorities in prosecuting user(s) who are participants or involved parties in such violations; and,
- xiii. Client shall comply with software license agreements for all software that Client uses in conjunction with Noobeh services.

These policies may be updated from time to time by Noobeh upon notice to all Clients by posting to the Noobeh website.

- b. Noobeh and Client further agree that the Microsoft *Customer Agreement* governs Client's use of applicable Noobeh services and as such are considered to be incorporated herein as may be amended from time. Microsoft Customer Agreement is available at <https://www.microsoft.com/licensing/docs/customeragreement>. When Microsoft introduces features, supplements or related software that are new, Microsoft may provide terms or make updates to the online services terms that apply to your use of those new features, supplements or related software.

9. Confidentiality and Privacy

- a. *Noobeh Property.*

Noobeh makes use of proprietary intellectual property of Noobeh including but not limited to Noobeh tools and technologies for delivery of Services to Client ("Noobeh Property", which shall also be known and treated by Client as Confidential Information of Noobeh). Client acknowledges that all right and title to any such Noobeh Property shall remain the sole property of Noobeh and that Client has no right, title or interest therein. Client agrees not to (a) attempt to reproduce, reverse engineer, decompile, or disassemble any Noobeh service or solution; (b) copy any software used in the delivery of the Noobeh Services; and/or (c) sell, lease, license or sublicense the Noobeh Service or any software or documentation related thereto.

- b. *Client Data.*

Client's data ("Client Data"), which shall also be known and treated by Noobeh as Confidential Information of Client shall include Client's data collected, used, processed, stored or generated as the result of the use of the Services.

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c. Confidential Information.

- i. Noobeh makes every reasonable effort to maintain the confidentiality of data hosted through Noobeh services. These efforts include but are not limited to encryption, username-based authentication, access control lists, and user rights restriction. Client may at its discretion encrypt or password-protect hosted data using encrypted ZIP file formats, file password security and other available user methods. Noobeh will not disclose or allow access to your hosted data to any other party except as required by law or compelled by court order. Ownership of Client's hosted data remains exclusively with Client and no rights to Client's data are transferred to Noobeh through Client's use of Noobeh services. Noobeh will not retain hosted data beyond the backup retention period described with the Service or the past the date of account or Service termination. Client is responsible for verifying the integrity of Client's hosted data at least every 90 days.
- ii. Client is solely responsible for ensuring that Client's login information remains secure and is utilized only by Client and/or Client's designated authorized employees and agents. Client's responsibility includes ensuring the secrecy and strength of your passwords. Noobeh shall have no liability resulting from the unauthorized use of Client's login information.
- iii. If Client's login information is lost, stolen or used by unauthorized parties or if Client believes that Client's hosted data has been accessed by unauthorized parties, it is Client's responsibility to immediately notify Noobeh of the circumstances, and to request the login credentials be disabled, deleted or reset so that continued unauthorized access may be prevented. Noobeh will use commercially reasonable efforts to perform on such requests as soon as is practicable after receiving the request from Client.

10. Warranty

- a. Noobeh uses reasonable efforts to maintain operation of the Noobeh Services. Because many events and circumstances may occur which are beyond the control of Noobeh, Noobeh does not in any way warrant or otherwise guarantee the availability of the Noobeh system or servers and is not responsible for any delay or loss of data, lack of connection, slow connection, or any other such issues whether due to the active or passive negligence of Noobeh. Noobeh may, at its sole discretion, limit or deny access to its services if, in the judgment of Noobeh, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network, the software or the data stored through Noobeh's Services.
- b. **DISCLAIMER OF WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THE ORDER, NOOBEH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICES, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. NOOBEH SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY**

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IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.

- c. **DISCLAIMER OF CERTAIN DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL, ARISING IN CONNECTION WITH THE ORDER, UNDER ANY THEORY OR TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- d. **LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER IN CONNECTION WITH THE ORDER, FOR ANY AND ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT TO NOOBEH OR DUE TO NOOBEH BY CLIENT PURSUANT TO ANY ORDER. FURTHER IN NO EVENT SHALL NOOBEH BE LIABLE FOR CLIENT'S DATA OR FOR ANY DAMAGES THAT MAY OCCUR TO CLIENT'S DATA, BUSINESS, OR BUSINESS RELATIONSHIPS DUE TO THE MALFUNCTIONING OR UNAVAILABILITY OF THIRD PARTY SOFTWARE OR HARDWARE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO A PARTY'S LIABILITY FOR PERSONAL INJURY OR DAMAGE TO PHYSICAL PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH PARTY.

11. Indemnification

- a. Each Party shall indemnify and hold harmless the other and its officers, directors, employees, agents, parent, affiliates, successors and assigns from and against all claims for damages, liabilities, or expenses, including reasonable attorney's fees (i) caused solely by the negligence of such party and (ii) from any and all claims and liability and related costs and expenses, including court costs and reasonable attorney fees, resulting from a material breach of the Order.
- b. Client shall indemnify and hold harmless Noobeh and its officers, directors, employees, agents, parent, affiliates, successors and assigns from and against all claims for damages, liabilities, or expenses, including reasonable attorney's fees related to Client's modification of the Services delivered to Client, or any violation of Noobeh's Acceptable Use Policy or Privacy Policy.
- c. Client agrees that Client will maintain the confidentiality of Client's account information and assume all responsibility of and from any loss, theft or other destruction of any data as the result of any access to your account via the use of Client's login information. Client further agree to defend and indemnify and hold harmless Noobeh of and from any and all third-party claims, causes of action, demands, costs, damages including both direct and consequential damages, specifically including attorney fees and costs, expert fees and costs and mediation and/or arbitration fees and costs incurred as the result of

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any claim for damages in any way related to the disclosure of Client's confidential login information.

12. Relationship of the Parties

This Agreement does not create a relationship between the Parties as one of employer and employee, franchisor and franchisee, partners, or a joint venture. Neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other party. Further nothing in this Agreement shall preclude or limit Noobeh from independently acquiring or developing competitive products or services for itself or its clients, or from providing competitive products or services to its clients, so long as Noobeh does not breach the obligations (including the obligations of confidentiality) it has assumed under this Agreement.

13. Miscellaneous

a. Compliance with Laws.

Each party agrees to comply with all applicable laws in connection with the Agreement, including all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Client is solely responsible for compliance related to the manner in which chooses to use the services delivered hereunder pursuant to this Agreement and the Order, including transfer and processing of content and the provision of content to any users pursuant to applicable law.

b. Third Party Beneficiaries.

Unless otherwise agreed, this Agreement and accompanying Order do not create any third-party beneficiary rights in any individual or entity that is not a party to the Agreement and Order.

c. Notice.

All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received (or delivery refused).

If to Noobeh:

Noobeh, LLC

Attn: Accounting and Administration

18501 Pines Boulevard, Suite 204

Pembroke Pines, Florida 33029

Phone 954-447-0250

E-mail: accounting@noobeh.com

With a copy to:

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Ellen B. Pilelsky, Esq.

Oppenheim Law

2500 Weston Road, Suite 404

Weston, FL 33331

Phone: (954) 384-6114

E-mail: ellen@oplaw.net

If to Client:

At the address provided in the Order.

Either party may change its address by providing notice of such address change to the other party in the manner set forth above.

d. Force Majeure.

If either Party's performance under the Agreement and Order or any obligation thereunder (excluding Client's obligation to pay for Services rendered by Noobeh) is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut by a third party, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of anyone or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, war, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then the affected Party shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. The affected party shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.

e. Assignment.

Neither party may assign the Agreement and Order or any of its rights thereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that (a) Noobeh may assign its rights and/or obligations under the Order, (i) to any parent, affiliate or subsidiary, (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, or (iii) for purposes of financing; and (b) Client may assign its rights and/or obligations under the Order, (i) to its parent, affiliates or subsidiaries, or (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, provided that any assignment by Client pursuant to this exception is subject to the following conditions: (a) the proposed assignee satisfies Noobeh's then current credit and deposit standards; (b) Client has fully paid for all Services through the date of the assignment; and (c) the proposed assignee agrees in writing to be bound by all provisions of the Order. Any assignment in violation of this Section is null and void.

f. Severability.

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If any provision under the Order or any other document that becomes part of the Order including these Terms and Conditions are declared or held to be invalid, illegal or unenforceable, all of the foregoing shall be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of either or both shall remain in full force and effect, provided that the modification is consistent with the original intent.

g. Jurisdiction/Governing Law/Attorney's Fees and Costs.

This Agreement, including the Order, shall be governed by and construed in accordance with the laws of the State of Florida. For any and all litigation related to this Agreement, Noobeh and Client agree that such litigation must be filed in Broward County, Florida. The prevailing party shall be entitled to reasonable attorneys' fees and court costs in the event that legal services are used in connection with the collection or enforcement arising from or related to this Agreement, whether or not suit is brought and whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise.

h. No Waiver.

The failure to enforce any provision or term of the Order or any other document that becomes part of the Order including these Terms and Conditions, shall not be construed as a future or continuing waiver of any provision or term of any of the above.

i. Trademarks and Copyright.

Third party trademarks are the property of their respective owners. All content of this web site is copyright of Noobeh. You may not copy any content without Noobeh written permission except under the terms of fair use or as required by law.

j. Captions.

The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope of intent of the provisions of this Agreement.

k. Amendments.

These Terms and Conditions, and the Order (and any attachments and other documents incorporated therein by reference) constitute the entire agreement between the parties with respect to the services provided under the Order and supersedes all other representations, understandings or agreements that are not expressed therein, whether oral or written. Noobeh may without advance notice amend this agreement from time to time and will do so by posting the new agreement on the Noobeh website. Each and every such amendment shall become effective immediately for users of Noobeh including but not limited to all pre-existing and future accounts. It is your responsibility to periodically check the Noobeh website for updates of this Agreement. Except as otherwise set forth in the Order, no amendment to the Order shall be valid unless in writing and signed by both Parties.