



## NoviHome Service Agreement

This Service Agreement (this “**Agreement**”) governs your (the “**Buyer’s**”) acquisition and use of the NoviHome Services provided by NoviHome, LLC (the “**Provider**”).

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING AN ICON OR BUTTON INDICATING BUYER’S ACCEPTANCE, BY EXECUTING ANY NOVIHOME SOFTWARE PURCHASE AGREEMENT THAT REFERENCES THIS AGREEMENT OR BY CONTINUING TO USE PROVIDER’S SERVICES, BUYER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE PERSON ACCEPTING THIS AGREEMENT DOES SO ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH PERSON REPRESENTS THAT THEY HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “BUYER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES; HOWEVER, IF THAT PERSON DOES NOT HAVE SUCH AUTHORITY, OR IF BUYER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, BUYER MUST NOT ACCEPT THIS AGREEMENT AND MUST NOT USE THE SERVICES.

This Agreement is effective between Buyer and Provider as of the date Buyer accepts this Agreement. By accepting this Agreement, Buyer agrees to have this Agreement provided in electronic format. The following terms and conditions, together with any documents they expressly incorporate by reference, govern Buyer’s access to, rights, limitations, and use of the Provider Services.

### 1. Definitions.

“**Access Credentials**” means any user name, password, license or security key, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Hosted Services.

“**Authorized User**” means the legal entity and or individuals identified as authorized to use the Services pursuant to **Section 3.1** and the other terms and conditions of this Agreement.

“**Buyer Data**” means, information, data and other content, in any form or medium that is collected, downloaded or otherwise received, directly or indirectly from Buyer or an Authorized User by or through the Services.

“**Buyer’s User**” means any and all persons, representatives, and or entities that Buyer gives permission or makes access available to use Provider’s Services, Service Software, Provider Materials, or any other use covered in this Agreement.

“**Buyer Systems**” means the Buyer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Buyer or through the use of third-party services.

“**Documentation**” means any manuals, instructions or other documents or materials that the Provider provides or makes available to Buyer in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to

destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Buyer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Order Form**” means any order form, software purchase agreement, subscription agreement or other agreement relating to the Services which references this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“**Privacy Policy**” means the NoviHome Privacy Policy that Buyer and Buyer’s Users agree to before using the Services and that can be found on the NoviHome.com website.

“**Process**” means to take any action or perform any operation or set of operations that the Service Software is capable of taking or performing on any data, information or other content. “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Materials**” means the Service Software, Order Forms, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials may include Buyer Data and any information, data or other content derived from Provider’s monitoring of Buyer’s access to or use of the Services.

“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.

“**Provider Systems**” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

“**Service Software**” means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

“**Third Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

## 2. Services.

2.1 Services. Subject to and conditioned on Buyer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Buyer and its Authorized Users the services described in this Agreement, including Provider Personnel, Provider Systems, and Provider Materials, Service Software (collectively, the "**Services**") in accordance with the specifications and terms and conditions hereof, including to host, manage, operate and maintain the Services for remote electronic access and use by Buyer and its Authorized Users ("**Hosted Services**") 24 hours per day, seven days per week every day of the year, except: (i) scheduled system back-up or other on-going maintenance as required and scheduled in advance by Provider, or (ii) for any unforeseen cause beyond Provider's reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any Force Majeure Events set forth in this Agreement. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software. Provider further reserves the right to monitor and reasonably restrict Buyer's ability to use the Services if Buyer is using excessive computing resources and such use is impacting the performance of the Services for other subscribers. Provider agrees to notify Buyer in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or work-around solution.

2.2 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a) Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials; and

(b) Buyer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Buyer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Buyer Systems or any other means controlled by Buyer or any Authorized User.

2.3 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**"). Buyer agrees that Provider is not responsible for any harm caused to Buyer by use of Subcontractors.

2.4 Suspension or Termination of Services. Provider may, directly or indirectly by any lawful means, suspend, terminate or otherwise deny Buyer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and sole discretion, that: (i) Buyer or any Authorized User has failed to comply with, any term of this Agreement, including not accepting this Agreement and the Privacy Policy, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the specifications; (ii) Buyer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This **Section 2.4** does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

### 3. Authorization and Buyer Restrictions.

3.1 Authorization. Subject to and conditioned on Buyer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby authorizes Buyer to access and use, during the Term, the Services and such Provider Materials as Provider may supply or make available to Buyer solely for the Permitted Use by and through Authorized Users in accordance with the conditions and limitations set forth in this Agreement. This authorization is limited, non-exclusive and other than as may be expressly set forth in this Agreement non-transferable.

3.2 Authorization Limitations and Restrictions. Buyer shall not, and shall not permit any other Person to, access or use the Services, Provider Materials, or Third-Party Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Buyer shall not, except as this Agreement expressly permits: (a) copy, modify or create derivative works or improvements of the Services or Provider Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, Provider Materials, or Third-Party Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services, Provider Materials, or Third-Party Materials or access or use the Services, Provider Materials, or Third-Party Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit or otherwise provide to or through the Services, Provider Systems, or Third-Party Materials, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems, Third-Party Materials or Provider's provision of services to any third party, in whole or in part; (g) remove, delete, alter or obscure any trademarks, specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, Provider Materials, or Third-Party Materials, including any copy thereof; (h) access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes; or (i) access or use the Services beyond the scope of the authorization granted under **Section 3.1**.

#### 4. Buyer Obligations.

4.1 Buyer Systems and Cooperation. Buyer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with any system requirements all Buyer Systems on or through which the Services are accessed or used, including current operating systems; (b) provide Provider Personnel with such access to Buyer's premises and Buyer Systems as is necessary for Provider to perform the Services in accordance with the Agreement; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Buyer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Buyer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Buyer Failure**").

4.3 Corrective Action and Notice. If Buyer becomes aware of any actual or threatened activity prohibited by **Section 3.2**, Buyer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider within 48 hours of any such actual or threatened activity.

5. Service Support. The Services include Provider's standard Buyer support services ("**Support Services**") in accordance with the Provider service support schedule then in effect and as described in any Order Form.

6. Data Backup. The Services do not replace the need for Buyer to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF BUYER DATA.

#### 7. Security.

7.1 Provider Systems and Security Obligations. Provider will employ security measures in accordance with applicable industry practice.

7.2 Buyer Control and Responsibility. Buyer has and will retain sole responsibility for: (a) all Buyer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Buyer or any Authorized User in connection with the Services; (c) Buyer Systems; (d) the security and use of Buyer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Buyer Systems or its Authorized Users' Access Credentials, with or without Buyer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

7.3 Access and Security. Buyer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Buyer Data, including the uploading or other provision of Buyer Data for Processing by the Hosted Services. Buyer will not: (i) transmit or share Access Credentials to or with persons other than Authorized Users under the terms hereof, (ii) permit such Access Credentials to be cached in proxy servers and accessed by individuals who are not Authorized Users under the terms hereof, or (iii) permit access to the Services through a single identification or password code being made available to multiple users on any network. Buyer shall be solely responsible for assigning and ensuring the security and confidentiality of all Access Credentials with respect to access to and use of the Services by its Authorized Users. Buyer acknowledges that it will be fully responsible for all liabilities incurred through the use of any Access Credentials with respect to the Services assigned by Buyer and that any transactions on the Services under Access Credentials assigned by Buyer will be deemed to have been performed by Buyer. Buyer shall notify Provider immediately of any unauthorized uses of any Access Credentials. Use of any Access Credentials assigned by Buyer other than as provided in this Agreement shall constitute a breach of this Agreement by Buyer.

7.4 Buyer's User Compliance.

(a) Software Use by Buyer's User. Buyer agrees to inform Buyer's Users that Buyer is using the Services of Provider and to inform Buyer's User of any and all risks associated therewith. Buyer will be solely responsible for training and teaching Buyer's User to use the Services of Provider.

(b) Buyer's User Protection. Buyer agrees to be solely responsible for protecting and safeguarding Buyer's User's information, data, images, videos or the like from any and all actions from Buyer or Provider that may violate the rights of Buyer's User or any law.

8. Fees; Payment Terms.

8.1 Fees. Buyer shall pay Provider all fees set forth in any Order Form ("Fees"). All Fees and other amounts payable by Buyer under this Agreement are exclusive of taxes and similar assessments. Buyer is responsible for the payment of all taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Buyer hereunder, other than any taxes imposed on Provider's income. Fees paid by Buyer to Provider are not refundable. Provider will provide any discounts provided for on the Order Form or pursuant to the Provider's then current discount program.

8.2 Payment. Buyer shall pay all Fees set forth in the Order Form on or prior to the due date set forth in the Order Form, or otherwise when payments are due. Buyer shall make all payments hereunder in US dollars by Credit Card, Automated Clearing House (ACH) withdrawal, personal check, business check or cashier's check.

8.3 Late Payment. If Buyer fails to make any payment when due then, in addition to all other remedies that may be available, Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law and Buyer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

8.4 Payment Method. Buyer shall provide Provider with a current, valid, accepted method of payment (as such may be updated from time to time, "**Payment Method**") to use the Services. During the Term, Provider will bill any monthly fees to Buyer's Payment Method. Upon execution of the Order Form, Provider will bill the Payment Method for any fees due upon execution of the Order Form. Buyer may edit the Payment Method information by contacting Provider's Buyer care center at **1-435-867-0077**. If any payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and Buyer does not edit Buyer's Payment Method information, Buyer will remain responsible for any uncollected amounts (subject to the applicable late payment charges) and Buyer authorizes Provider to continue billing the Payment Method, as it may be updated. For certain Payment Methods, the issuer of Buyer's Payment Method may charge Buyer a foreign transaction fee or other charges, which Buyer is solely responsible for. Buyer is advised to check with their Payment Method service provider for details.

8.5 Recurring Billing. By executing an Order Form and any associated payment documents, Buyer authorizes Provider to charge Buyer any monthly fees at the rates set forth on the Order Form or associated documents (the "**Monthly Fees**"), and any other charges Buyer may incur in connection with Buyer's use of the Services to Buyer's Payment Method. Buyer acknowledges that the amount billed each month may vary from month to month for reasons that may include late payment fees or access to the Services for additional Authorized Users, and Buyer authorizes Provider to charge Buyer's Payment Method for such varying amounts, which may be billed monthly in one or more charges.

8.6 Billing Cycle. During the term, Monthly Fees will be billed on the cycle set forth on the Order Form or payment documents associated with any Order Form. Provider will automatically bill Buyer's Payment Method each month on the applicable day of the billing cycle. Monthly fees are fully earned by Provider upon payment. Provider may authorize Buyer's Payment Method in anticipation of service-related charges. As used in this Agreement, "billing" shall indicate a charge, debit or other payment clearance, as applicable, against Buyer's Payment Method. Unless otherwise stated differently, month or monthly refers to Buyer's billing cycle.

## 9. Intellectual Property Rights.

9.1 Services and Provider Materials. Subject to the limited rights granted hereunder, all right, title and interest in and to the Services, including all Intellectual Property Rights therein, are and will remain solely with Provider.

9.2 Buyer Data. As between Buyer and Provider, Buyer and Provider will share joint ownership of all right, title and interest in and to all Buyer Data provided to Provider or used on the Services, in addition to the rights and permissions granted in **Section 9.3**. Buyer shall have sole responsibility for the accuracy integrity and reliability of Buyer Data and Provider will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Buyer Data. Buyer covenants that at no time shall Buyer Content contain (i) any defamatory, (ii) or otherwise unlawful information, data or material, provision of the Service or (iii) any information whose use in connection with the Services infringes the Intellectual Property rights of any third parties. In the event that Buyer requests Provider (and Provider agrees) to enter and/or process information on Buyer's behalf, Buyer shall be responsible for verifying all such information promptly after Provider's processing and Buyer acknowledges that Provider shall not be responsible for the accuracy (or inaccuracy) of any such information or any issues that may arise out of its processing of such information. In the event that inaccurate data is processed by Provider, Provider's sole liability, and Buyer's exclusive remedy, shall be for Provider to make a good faith effort to correct the affected data or remove the inaccurate information from its

database. Provider is under no obligation to review the Buyer Content for accuracy, potential liability or for any other reason.

9.3 Consent to Use Buyer Data. In addition to **Section 9.2** above, Buyer hereby irrevocably grants all such rights and permissions in or relating to Buyer Data to Provider, its affiliates and the Provider Personnel as are necessary or useful as further stated in the Privacy Policy and as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

## 10. Confidentiality.

10.1 Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Buyer’s Confidential Information includes Buyer’s Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

10.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate’s, legal counsel’s or accountant’s compliance with this **Section 10.2**.

10.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 11. Term and Termination.

11.1 Term of Agreement. This Agreement commences on the date Buyer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

11.2 Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that

during the immediately prior term unless Provider have given Buyer written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

11.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Provider may terminate this Agreement, effective on written notice to Buyer, if Buyer: (i) fails to pay any amount due, and such failure continues more than 15 days after Provider's delivery of notice thereof, (ii) violates any term of this Agreement, any Order Form, or Law; or (ii) breaches any of its obligations under **Section 3.2** (Use Limitations and Restrictions) or **Section 10** (Confidentiality).

(b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(d) Buyer may terminate this Agreement at any time and for any reason, after giving Provider (10) ten days written notice.

11.4 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) All rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate other than specific survival provisions;

(b) Buyer shall immediately cease all use of any Services or Provider Materials and (i) within 15 days return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information;

(c) Provider may disable all Buyer and Authorized User access to the Hosted Services and Provider Materials;

(d) If Buyer terminates this Agreement pursuant to **Section 11.3(b)**, Buyer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination;

(e) If Provider terminates this Agreement pursuant to **Section 11.3(a)** or **Section 11.3(b)**, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Buyer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefore.

11.5 Return of Buyer Data. Upon request by Buyer made within 30 days after the effective date of termination of the Term, Provider may make available to Buyer for download a file of Buyer Data in a reasonable format at the price then charged by Provider for such services. After such 30-day period, Provider has no obligation to maintain or provide any Buyer Data and shall thereafter continue to safeguard and utilize or delete all of Buyer Data in its systems or otherwise in its possession or under its control. Provider shall not be responsible for, or obligated to Buyer for, extraction and delivery of data in any other format, or any other data handling service and such requests by Buyer will be considered by Provider without obligation on a fee-paid basis.



11.6 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.2, Section 9, Section 10, Section 11.4, Section 11.5 Section 11.6, Section 12, Section 14, Section 15, and Section 17.**

12. Buyers Representations, Warranties and Covenants.

12.1 Buyer Representations, Warranties and Covenants. Buyer represents, warrants and covenants to Provider that Buyer owns or otherwise has and will have the necessary rights and consents in and relating to the Buyer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

13. Indemnification.

13.1 Provider Indemnification. Provider shall indemnify, defend and hold harmless Buyer from and against any and all Losses incurred by Buyer arising out of or relating to any claim, suit, action or proceeding (each, an “**Action**”) by a third party (other than an affiliate of Buyer that Buyer’s or an Authorized User’s use of the Services (excluding Buyer Data and Third Party Materials) in compliance with this Agreement (including the specifications) infringes a U.S. Intellectual Property Right.

13.2 Buyer Indemnification. Buyer shall indemnify, defend and hold harmless Provider and its Subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**Provider Indemnitee**”) from and against any and all Losses incurred by such Provider Indemnitee in connection with any Action by a third party related to any: (a) Buyer Data, including any Processing of Buyer Data by or on behalf of Provider in accordance with this Agreement; (b) allegation of facts that, if true, would constitute Buyer’s breach of any of its representations, warranties, covenants or obligations under this Agreement; or (c) gross negligence or more culpable act or omission by Buyer, any Authorized User, or any third party on behalf of Buyer or any Authorized User, in connection with this Agreement.

13.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 13.1** or **Section 13.2**, as the case may be. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this **Section 13.3** will not relieve the Indemnitor of its obligations under this **Section 13** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Buyer shall not enter into any settlement without the consent of Provider unless such settlement specifically and unconditionally releases Provider of all liability.

14. Limitations of Liability.

THIS SECTION 14 SETS FORTH BUYER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND PROVIDER MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

14.1 Limitation of Liability. NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY BUYER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL

EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY BUYER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT BUYER'S PAYMENT OBLIGATIONS UNDER SECTION 8 (FEES AND PAYMENT FOR THE SERVICES).

14.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

14.3 Wavier of Certain Risk. BUYER REPRESENTS AND WARRANTS THAT BUYER KNOWS AND AGREES THAT NO ON-LINE SERVICE IS COMPLETELY SECURE AGAINST UNAUTHORIZED ACCESS, AND THAT, WHEN USING THE SERVICES, IT WILL BE TRANSMITTING DATA OVER PUBLIC NETWORKS THAT ARE INHERENTLY INSECURE. ALTHOUGH PROVIDER WILL TAKE COMMERCIALY AND TECHNICALLY REASONABLE PRECAUTIONS TO PREVENT UNAUTHORIZED ACCESS, BUYER ASSUMES ALL RISK ASSOCIATED WITH UNAUTHORIZED INTERCEPTION, USE AND ACCESS TO DATA SENT BY AND TO BUYER WHEN USING THE SERVICES. PROVIDER IS NOT AND WILL NOT BE RESPONSIBLE FOR DISRUPTION OF SERVICES OR LOSS OF DATA, OR ANY OTHER DAMAGE, LOSS OR LIABILITY RESULTING FROM THE SERVICES.

14.4 DISCLAIMER OF WARRANTIES. ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN BUYER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 15. Reserved Rights.

15.1 Rights Preserved. Any rights not expressly given to Buyer by Provider are preserved with Provider.

15.2 Changes and Updates to Software. You agree that Provider may alter or modify the Software Services or Services without notice to you or approval from you, including content, materials, forms, appearance, applications, operating systems, and functionality of the Software from time to time, even if such modification does not please you. You agree that Provider and licensors will not be liable if for any reason all or any part of the Software is unavailable at any time or for any period. From time to time, Provider may restrict access to some parts of the Software, or the entire Software. You agree that Provider has the right to disable any user name, password or other identifier, whether chosen by you or provided by Provider licensors, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of this Agreement.

15.3 Changes to this Agreement. You agree that Company may revise and modify this Agreement from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Software Services and Services thereafter.

15.4 Changes to the Privacy Policy. You agree that Company may revise and modify the current Privacy Policy from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of your information thereafter.

15.5 Home Buyer / Builder Agreements. As a Service user of Buyer, Buyer agrees that Provider may cause Buyer's Home Buyers / Builders to enter into Providers software terms and conditions, privacy policy, and rewards program terms and conditions prior to their using the Services.

15.6 Data from Home Buyer Users. Buyer agrees that Provider may collect personal data on Buyer's Home Buyers or Builders that use the Services to enhance the Services, conduct security and statistical analysis, collect and sell personal data to third party companies, to enforce this Agreement, assist law enforcement and as otherwise legally allowed and as further stated in the current NoviHome Privacy Policy which is herein incorporated in this Agreement by this reference.

15.7 Marketing to Home Buyers. Buyer agrees that Provider may collect personal data on their Home Buyer and Home Builder users and provide, or cause to be provided, marketing and advertising materials, promotions, and offers from Provider or third party companies directly to Buyer's Home Buyer or Builder users or indirectly on Provider Services in the form of text, images, videos, content packs, ads, links, wraps, banners or other means as decided by Provider.

15.8 NoviHome Member Benefits Program. Buyer agrees that Buyer and Buyer's Home Buyers may use the NoviHome Member Benefits Program solely owned and offered by Provider to Buyer and their Home Buyers. Buyer agrees that Provider may utilize data collected from Buyer's Home Buyer's upon such Home Buyer registering for the NoviHome Member Benefits Program to provide Home Buyer with offers and discounts relating to third party products and services. In the event Buyer wishes to provide information to their Home Buyers on products or services offered through the NoviHome Member Benefits Program, Buyer agrees to comply with all federal, state and local laws relating to sales, solicitation and communication, including but not limited to, the Telephone Consumer Protection Act.

## 16. Force Majeure.

16.1 No Breach or Default. In no event shall Provider be liable or responsible to Buyer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

## 17. Miscellaneous.

17.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

17.2 Notices. Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by e-mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally. Unless Provider is otherwise notified in writing, the Buyer's address for notice purposes shall be Buyer's address provided as part of Buyer's billing information.

17.3 Entire Agreement. This Agreement, any Order Form and associated payment documents, and the Privacy Policy, all of which Buyer agreed with, are the entire agreement (“**Entire Agreement**”) between Buyer and Provider regarding Buyer’s use of the Services and any rights and limitations thereof and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency among the above listed documents, an arbitrator will interpret the intended meaning as a whole, as if the above mentioned agreements were one, to resolve such conflict or inconsistency as set out in **Section 17.7**. Buyer and Provider intend that the provisions of the Entire Agreement be enforced to the fullest extent permitted by applicable law.

17.4 Assignment. Buyer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Provider’s prior written consent. Any purported assignment, delegation or transfer in violation of this **Section 17.4** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

17.5 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17.6 Severability. If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

17.7 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Waiver of Consolidation. This Agreement, included as the Entire Agreement, shall be governed exclusively by the laws of the State of Utah, without regard to its conflicts of laws principles. Any legal action under or concerning this Agreement shall be brought exclusively in the District Court of Iron County, Utah or, in the event of a federal action, the appropriate federal court located in the State of Utah. The parties irrevocably agree and consent that said forum is convenient and has exclusive jurisdiction to hear and decide any such action. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Provider and Buyer agree to only pursue legal actions on an individual basis and will not pursue legal actions on a class, consolidated, or representative basis, regardless of the application of procedural rule. Provider and Buyer also agree to waive the ability to proceed in a class action, consolidated action, or representative actions, either as a representative or member of a class. The Buyer agrees that before the Buyer can initiate any legal action, the Buyer must notify Provider in writing of a dispute and the parties will then work in good faith for the following (30) day period to work out such dispute. If the parties cannot resolve such dispute, the parties will proceed with any action under this **Section 17.7**.