

**NOVIPOD, LLC**

**TERMS OF SERVICE**

**January 1, 2018**

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**5. ELIGIBILITY.** You affirm that You are of legal age and are otherwise fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement. Although we cannot absolutely control whether minors gain unauthorized access to the Products, access may be terminated without warning if we believe that You are underage or otherwise ineligible.

**6. CHARGES.** You agree that Novipod may charge to Your credit card or other payment mechanism selected by You and approved by Novipod ("Your Account") all amounts due and owing for the Products, including Product fees, set up fees, subscription fees, or any other fee or charge associated with Your Account. Novipod may change prices at any time, including changing from a free service to a paid service and charging for Products that were previously offered free of charge; provided, however, that Novipod will provide You with prior notice and an opportunity to terminate Your Account if Novipod changes the price of a Product to which You are subscribed and will not charge you for a previously free Product unless you have been notified of the applicable fees and agreed to pay such fees. You agree that in the event Novipod is unable to collect the fees owed to Novipod for the Products through Your Account, Novipod may take any other steps it deems necessary to collect such fees from You and that You will be responsible for all costs and expenses incurred by Novipod in connection with such collection activity, including collection fees, court costs and attorneys' fees. You further agree that Novipod may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.

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**14. PRIVACY.** Use the Products is also subject to Novipod's Privacy Policy, a link to which is here, and which is incorporated into this Agreement by this reference. Additionally, You understand and agree that Novipod may contact You via e-mail or otherwise with information relevant to Your use of the Products, regardless of whether You have opted out of receiving such notices. You also agree to have Your name and/or email address listed in the header of certain communications You initiate through the Products.

**15. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NOVIPOD OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR DAMAGE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF NOVIPOD, ITS AFFILIATES, SUPPLIERS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NOVIPOD'S, ITS AFFILIATES', AND RESELLERS' MAXIMUM CUMULATIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE PRODUCTS (IF ANY) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.

## **16. MISCELLANEOUS**

16.1 Choice of Law and Forum. This Agreement shall be governed by and construed under the laws of the State of Pennsylvania. The parties consent to the exclusive jurisdiction and venue of the state and federal courts located in and serving Harrisburg, Pennsylvania.

16.2 Waiver and Severability. Failure by either party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect.

16.3 General Provisions. This Agreement embodies the entire understanding and agreement between the parties respecting the subject matter of this Agreement and supersedes any and all prior understandings and agreements between the parties respecting such subject matter, except that if You or Your company

have executed a separate written agreement or you have signed an order form referencing a separate agreement governing your use of the Products, then such agreement shall control to the extent that any provision of this Agreement conflicts with the terms of such agreement. Novipod may elect to change or supplement the terms of this Agreement from time to time at its sole discretion. Novipod will exercise commercially reasonable business efforts to provide notice to You of any material changes to this Agreement. Within five (5) business days of posting changes to this Agreement, they will be binding on You. If You do not agree with the changes, You should discontinue using the Products. If You continue using the Products after such five-business-day period, You will be deemed to have accepted the changes to the terms of this Agreement. In order to participate in certain Products, You may be notified that You are required to download software and/or agree to additional terms and conditions. Unless expressly set forth in such additional terms and conditions, those additional terms are hereby incorporated into this Agreement. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. All notices or other correspondence to Novipod under this Agreement must be provided to the email address set forth in Section 9 above, or other contact information as provided by Novipod for such purpose. Any and all rights and remedies of Novipod upon Your breach or other default under this Agreement will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity on Novipod, and the exercise of any one remedy will not preclude the exercise of any other. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.

16.4 Questions? If You have any questions about this Agreement, You may contact us at [support@novipod.com](mailto:support@novipod.com).