

Novell® Conferencing

Terms of Service

(May 2010 Revision)

IMPORTANT, READ CAREFULLY: YOUR USE OF THE NOVELL CONFERENCING WEBSITE, SERVICES AND ASSOCIATED SOFTWARE IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS OF SERVICE.

BY CLICKING/CHECKING THE "I AGREE" BUTTON/BOX, ACCESSING THE CONFERENCING WEBSITE OR BY UTILIZING THE CONFERENCING SERVICES OR ASSOCIATED SOFTWARE, YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE, CLICK THE "CANCEL"/"BACK" BUTTON AND DO NOT USE THE WEBSITE, SERVICES OR SOFTWARE.

THIS A BINDING CONTRACT BETWEEN NOVELL, INC ("NOVELL") AND YOU AND, IF APPLICABLE, THE COMPANY OR OTHER LEGAL ENTITY YOU REPRESENT (COLLECTIVELY "YOU"). Novell may, in its sole discretion, modify or revise these Terms of Service and associated policies at any time by posting a new revision on the Service web site and You agree to be bound by such modifications or revisions. If You do not accept and abide by these Terms of Service, You may not use the Service.

1. Description of Service.

Novell Conferencing (the "Service") is an online tool that enables You to host and attend live meetings, demos and webinars using just a web browser. You may instantly sharing documents, web pages, whiteboards, audio, video – even record Your events. If You record events, You are solely responsible for ensuring You have all consents necessary to record events under all applicable laws.

2. Account Protection.

You are responsible for maintaining the confidentiality of Your Service password and account, and are responsible for all activities that occur thereunder. You may be required to provide information in order to register for and/or use certain Services. You warrant that all such information is accurate. Novell reserves the right to disable or terminate Your account after Your purchased subscription has expired.

3. Proper Use.

You agree that You will use the Service in compliance with all applicable local, state, national, and international laws, rules and regulations, including any laws regarding the transmission of technical data exported from Your country of residence. You acknowledge that the Service may be located and provided from a country or jurisdiction other than that of Your physical location. You shall not, shall not agree to, and shall not authorize or encourage any third party to: (i) use the Service to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, contains viruses, or is otherwise objectionable as reasonably determined by Novell; (ii) upload, transmit or otherwise distribute content that infringes

any other party's intellectual property rights or other proprietary, contractual or fiduciary rights or obligations; or (iii) use the Service for any fraudulent or inappropriate purpose. Violation of any of the foregoing may result in immediate termination of Your account and may subject You to penalties and other legal consequences that may vary by jurisdiction. Novell reserves the right, but shall have no obligation, to investigate Your use of the Service in order to determine whether a violation of the Terms of Service has occurred or to comply with any applicable law, regulation, legal process or governmental request.

4. Privacy.

Use of the Services constitutes Your consent to Novell's and/or its affiliates' collection and use of such information and, for European Economic Area (EEA) customers, to the treatment and transfer of such information to a location outside the EEA. Use of the Service is subject to Novell's Privacy Statement located at <http://www.novell.com/company/policies/privacy/>, which is incorporated into this Agreement by this reference. Novell may contact You via e-mail or otherwise with information relevant to Your use of the Services and payment obligations. When using the Service, You consent to having Your name and/or email address listed in the header of certain communications You initiate through the Service.

5. Payment.

You agree to pay all amounts due and owing for the Services, including, but not limited to, Service fees, set up fees, subscription fees, overage fees, conferencing fees, storage fees, or any other fee or charge associated with Your account. Novell reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment (not being reasonably disputed by You) that is not received when due. You must notify Novell in writing of any disputed fees within fifteen (15) days from the date Your account is charged for such disputed fee. Novell may suspend the Services for non-payment of undisputed fees. Additionally, Novell is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due. Novell may change prices at any time without prior notice. You shall pay all taxes (exclusive of taxes based on the net income of Novell), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components.

6. Content.

You agree that it is solely responsible for the content of all visual, written or audible communications and any other material ("Content") displayed, uploaded, exchanged or transmitted on or through the Service. Under no circumstances will Novell be liable to You for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. You understand and agree that by displaying, uploading, exchanging or transmitting Content while using the Services or otherwise providing Content to a Novell website or space ("Site"), You automatically grant (and warrants and represents it has a right to grant) to Novell a world-wide, royalty-free, sublicensable (so Novell affiliates, contractors, resellers and partners can deliver the Services), perpetual, irrevocable license to use, modify, publicly perform, publicly display, reproduce and distribute the Content solely for the purpose of offering the Services. If at any time You object to any material on a Site, Your sole remedy is to cease using it (to the extent not prohibited by

applicable law). Novell does not endorse and has no control over what You or other users of the Service (“Users”) post or submit to a Site. You shall contact Novell Customer Support in accordance with the contact information provided in the applicable Services website if You become aware of misuse of the Services by any person. Novell cannot guarantee the accuracy of any information submitted by any participant or Content, nor any identity information about any participant. Novell may without notice or liability investigate any complaints and violations or suspected violations of these Terms that come to its attention and may take any action that it believes is appropriate, including, but not limited to, to rejecting, refusing to post or removing any profile, posting Content, or other data, or restricting, suspending, or terminating Your or any Participant’s access to a Site or Services. However, because situations and interpretations vary, Novell also reserves the right not to take any action.

7. Communications. You agree that You will not use the Services to send unsolicited email outside Your company or organization (e.g., “spam”) in violation of applicable law, falsify any email header information when sending emails (e.g., “spoofing”), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., “phishing”). You further agree not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation. You agree to indemnify, defend and hold harmless Novell from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys’ fees) arising from Your violation of Sections 5, 6 or 7.

8. Software and Intellectual Property Rights.

Software provided by Novell in connection with the Service, if any, will be governed by the license agreement accompanying the software. Novell and its licensors own all right, title and interest in and to the Service, including without limitation all intellectual property rights. You are not authorized to use any Novell trade names, trademarks, service marks, or logos or to make any representations or warranties on behalf of Novell.

9. Termination; Cancellation.

Novell may at any time suspend or terminate Your account for Your failure to make payments or to comply with these Terms. Sections 5, 7, 8, 9 and 10 of these Terms of Service shall survive expiration or termination. understand and agree that the Service is provided on an AS IS and AS AVAILABLE basis. Novell may discontinue the Service at any time. Novell disclaims all responsibility and liability for the availability or reliability of the Service. Novell also reserves the right to modify, suspend or discontinue the Service with or without notice at any time and without any liability to You. You represent and warrant that (a) all of the information provided by You to Novell to participate in the Services is correct and current; and (b) You have all necessary right, power and authority to enter into these Terms of Service.

10. Indemnification.

You agree to hold harmless and indemnify Novell, and its subsidiaries, affiliates, officers, agents, and employees from and against any third party claim arising from or in any way related to Your use of the Service or any content or software You upload to the Service,

including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, Novell will provide You with written notice of such claim, suit or action.

- 11. Warranty Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU UNDERSTAND AND AGREE THAT THE SERVICES, SITES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED “AS IS” AND “AS AVAILABLE.” TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOVELL, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NOVELL, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, MAKE NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, OR THAT THE SERVICES WILL MEET ANY OF YOUR REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. Some jurisdictions do not allow the disclaimer of implied warranties, so the above disclaimer may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary by jurisdiction. You agree to indemnify, defend and hold harmless Novell, its affiliates, suppliers and resellers from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys’ fees) arising from Your use of the Services, Your violation of these Terms or the infringement or violation by You or any other user of Your account, of any intellectual property or other right of any person or entity. Without limiting the foregoing, the Services are not designed or licensed for use in environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and Novell, and its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.
- 12. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NOVELL, OR ITS SUPPLIERS, RESELLERS OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE SITES, OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF NOVELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOVELL’S

(AND ITS SUPPLIERS', RESELLERS' AND AFFILIATES') 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, IF ANY, FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.

13. Export.

You acknowledge that the software and/or technology offered through the Service may be subject to the U.S. Export Administration Regulations (the "EAR") and that you will comply with the EAR. You will not export or re-export these products, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who you know or have reason to know will utilize this product in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. By using the Service, you are warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction which may impact Your right to import, export or use these products.

14. Choice of Law; Jurisdiction.

These Terms of Service will be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its conflict of laws provisions or Your actual state or country of residence. Any claims, legal proceeding or litigation arising in connection with the Service will be brought solely in Utah, and You consent to the jurisdiction of such courts.

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