novacura

Novacura's General Terms for Subscription Software License

1. Background

These General Terms and Conditions for Subscription Software License (in this document; the "**General Terms**") describes the Customer's rights and the conditions upon which the Customer may use the Software and the Applications ordered by the Customer under a Sales Order.

2. Service Commencement Date

Upon the Service Commencement Date and during the Subscription Term, Novacura shall make the Software and the Applications available for download over an electronic communications network.

3. Licenses and Applications

3.1. <u>License to the Software</u>

Subject to Customer's continued compliance with these General Terms, the Sales Order and the payment of all applicable Fees, the Customer is for the duration of the Subscription Term granted a limited and non-exclusive license to use the Software and documentation related thereto, solely for the Customer's internal business purposes, under the terms and conditions stated in these General Terms and the Sales Order.

The license for the Software granted herein applies to such functionalities as has been specified in the Sales Order and are further described in the Service Description, such as Novacura Flow Server, Novacura Flow Studio, Novacura Flow Runtime and Novacura Flow Portal.

3.2. <u>License to Base Applications</u>

Base Applications are standardized templates or applications provided by Novacura. Base Applications can consist of ready to use applications or of components that can be used as parts of a developed application. Some Base Applications may be provided as free templates without cost. If the Customer has purchased a Base Application from Novacura and subject to Customer's continued compliance with these General Terms, the Sales Order and the payment of all applicable Fees, the Customer is for the duration of the Subscription Term granted a limited and non-exclusive license to use the Base Application, solely for the Customer's internal business purposes, under the terms and conditions stated in these General Terms. Additional terms of use for the Base Applications may be agreed upon in connection with each purchase.

3.3. <u>License to Customized Applications</u>

A Customized Application consists of a Base Application modified by or on behalf of Novacura AB. Any and all intellectual property rights to Customized Applications shall be held by Novacura AB (note that Customer has the opportunity to obtain intellectual property rights to its bespoke developed or adjusted applications as a Customer Application subject to the terms set out in Section 3.4 below). The fees payable for customization work will be agreed upon in the applicable Sales Order.

Subject to Customer's continued compliance with these General Terms, the Sales Order and the payment of all applicable Fees, the Customer is for the duration of the Subscription Term granted a limited and non-exclusive license to use a Customized Application, solely for the Customer's internal business purposes, under the terms and conditions stated in these General Terms. The Parties may agree additional terms of use for a Customized Application.

3.4. <u>Customer Application</u>

A Customer Application consists of either (i) an unlocked Base Application modified by or on behalf of the Customer, or (ii) an application independently developed by or on behalf of the Customer (not being based on a Base Application). In order to obtain the right to independently modify a Base Application, the Customer must first unlock the Base Application. The fee payable for unlocking the Base Application is set forth in Novacura's

at each time applicable price list, unless otherwise agreed in the Sales Order. Customer, or its contractor, will retain all intellectual property rights relating to the modifications and/or developments of the Customer Application. For the avoidance of doubt, any and all intellectual property rights to the unlocked Base Application shall remain with Novacura AB and Customer's use of the Base Application as a base for its Customer Application is subject to these General Terms. Except as set forth in this Agreement, Customer may not copy, sell, resell, transfer, otherwise distribute, or grant any sublicenses or in any other way grant a right for a third party to use any Customer Application, which is based on a Base Application.

3.5.   Third Party Products

Notwithstanding anything to the contrary in the Agreement, the Agreement does not apply in respect of Third Party Products. All third party licensors retain all right, title and interest in and to such Third Party Products. Unless otherwise agreed in writing, the Customer's use of such Third Party Products is subject to the generally available third-party license terms applicable to the respective Third Party Product.

4.   Development Services

Customer may subscribe to a fixed number of consultancy hours per month to be used for customization or development of applications ("**Development Services**"). The subscription shall be set forth in the Sales Order. The performance of Development Services shall be governed by the General Terms for Consultancy Services.

5.   Maintenance

5.1.   Novacura will for the duration of the Subscription Term provide Maintenance Services to the Customer in accordance with the Maintenance Terms.

5.2.   During the Subscription Term Novacura may make changes and updates to the Software and Base Applications and improve the Software and Base Applications by implementing new feature releases. Customer will be either automatically upgraded or shall manually upgrade to new feature releases. Feature releases may be released up to one (1) time per month. Such new releases and/or updates will be included in the Fees.

5.3.   Upgrades must be made to the latest available feature release. This applies also in case Customer has neglected to implement several feature releases. It is not possible to upgrade to an earlier feature release. Software which is not upgraded by the Customer may lose its existing functionalities and not work as specified in the Sales Order after twelve (12) months.

6.   Customer obligations

6.1.   The Customer shall provide Novacura with all necessary assistance required for the performance of Novacura's undertakings under these General Terms.

6.2.   The Customer shall continuously review documents, make necessary decisions and provide Novacura with all adequate information, which is necessary for Novacura to be able to fulfil its undertakings.

6.3.   The Customer shall be responsible for the equipment used to operate the Software and Applications and shall furthermore be responsible for that it has the equipment, software and systems that are required to operate the Software and Applications. The Customer is consequently responsible for any faults and defects in the Customer Software.

6.4.   The Customer shall be responsible to procure the necessary licenses and any other rights to Customer Software that is required to utilize the Software and Applications provided by Novacura.

6.5.   The Customer warrants that it has the right to provide the Customer Data to Novacura and that the Customer Data does not infringe on any rights of a third party or makes unlawful use of a third party's trade secrets.

6.6.   The Customer acknowledges and agrees that Novacura and its affiliates and partners may have access to Customer Data and may need to use Customer Data for the purposes of fulfilling its obligations under the Agreement.

6.7. The Customer will be responsible for (a) Users' compliance with this Agreement, the Acceptable Use Policy and any end user license agreement that may be enforced by Novacura from time to time, (b) the accuracy, quality and legality of Customer Data, (c) Customer's use of Customer Data with the Software and Application, and (d) the interoperation of any Customer Application, Customer Software and/or a third party application provided by Customer which is used with the Software.

6.8. The Customer acknowledges that the Software, Applications and Third Party Products will transmit information about the Customer's use of the Software, Application and Third Party Products to Novacura. The Customer approves the transmission of this information and is responsible for obtaining any necessary permits or approvals for the transmission.

7. Intellectual property rights

7.1. Any intellectual property rights, including all other rights to the Software, Base Applications, Customized Applications, underlying software and know-how to the Software, Base Applications, Customized Applications and documentation related thereto, are the sole property of Novacura AB or its licensors. Nothing in the Agreement shall be construed to transfer any ownership to the Customer. In case Customer enters into the Agreement with another supplier party than Novacura AB (i.e. a Novacura AB affiliate or partner), any license granted in these General Terms is a sub-license.

7.2. The Customer is only allowed to use the Software, Base Applications and Customized Applications for the Customer's internal business purposes and shall, unless otherwise specifically agreed in the Sales Order, under no circumstances resell (standalone or bundled) the Software and Applications or use the Software and Applications for any other purposes.

7.3. Access to the Software, Base Applications and Customized Applications shall be granted only to the number of Users explicitly set forth in the Sales Order. The subscriptions provided under these General Terms can be a full User subscription or a limited subscription as set forth in the Sales Order. Examples of limited subscription forms are e.g. subscriptions restricted to named User's right to operate only Novacura Flow Portal or specific workflows, or the right for the Customer's Users to execute a maximum number of workflows per month. It is strictly forbidden for the Customer to breach the subscription terms set forth in the Sales Order, e.g. by allowing several Users to access the Software and Applications through a User account designated for a single User.

7.4. The Customer is not entitled to:

(a) transfer, grant any sublicenses or in any other way grant a right for a third party to use the Software or Applications without the prior approval of Novacura. Notwithstanding the foregoing, the Customer may allow external contractors to use the Software, Base Applications and Customized Applications for the Customer's internal purposes;

(b) develop or make any amendments to the Software and Base Application (unless such modification right has been granted in accordance with sections 3.3- 3.4); or

(c) decompile or reverse engineer the source code of the Software, Base Application or Customized Applications except to the extent expressly permitted by mandatory law.

8. Warranty

8.1. Novacura warrants that the Software, Base Applications and Customized Applications will during the Warranty Period materially operate in accordance with and conform to the specification. After the expiry of the Warranty Period, Novacura's Maintenance Services are available to address Defects.

8.2. The warranty does not apply in case the Defect is caused by the fault or negligence of Customer or a third party, improper or unauthorized use, failure to correctly install the latest updates and corrections, use in an IT-environment not recommended by Novacura, modifications or repair which is not made by Novacura or its partners or

affiliates, update in any third party used by the Customer, a force majeure event or other external factors such as power failure.

8.3. Following a written notice via Novacura's Support Center of a Defect in the Software, Base Applications or Customized Applications, Novacura will (i) upon Customer's request provide a temporary workaround as soon as reasonably possible, and (ii) provide a permanent remedy to the Defect within three (3) months from receipt of such written notice. If Novacura fails to comply with this section 8 the Customer is entitled to a refund of the Fees payable under the Agreement for the period during which the Defect has existed, or if the Defect has a material impact and is deemed impossible to remedy, terminate the Agreement within thirty (30) days.

8.4. This section 8 represent Novacura's sole liability and Customer's sole remedy for breach of warranty.

8.5. NOVACURA DISCLAIMS ALL WARRANTIES NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES AS TO QUALITY, MERCHANTABILITY, OPERABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NOVACURA PROVIDES ALL SOFTWARE, APPLICATIONS AND THE TECHNICAL INTERFACE BETWEEN NOVACURA FLOW AND THE CUSTOMER'S UNDERLYING SYSTEMS "AS IS" AND AS AVAILABLE.

9. Limitation of liability

9.1. Novacura is not liable for loss of data except if the loss is caused by Novacura's failure to make backup copies in accordance with the Service Description. Novacura is further not liable for the transfer of information via internet when the Customer uses the Software and/or Application (including any security breach or loss or damage to data), unless caused by Novacura's material breach of its obligations set out in the Service Description.

9.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE GENERAL TERMS, IN NO EVENT WILL THE AGGREGATE LIABILITY OF NOVACURA TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THE PRODUCTS OR SERVICES PROVIDED UNDER THESE GENERAL TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID TO NOVACURA PURSUANT TO THESE GENERAL TERMS IN THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THESE GENERAL TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

9.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AND THEIR AFFILIATES AND PARTNERS SHALL IN NO EVENT BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, LOSS OF DATA OR BUSINESS INTERRUPTION.

10. Fees and payment terms

10.1. Any specific price agreement regarding the Software, Applications and Maintenance Services, and any payment plan for the payments to be made by the Customer, shall be agreed between the Parties. If no specific agreement regarding Novacura's remuneration has been made between the Parties, the Customer shall pay the Fees to Novacura in accordance with Novacura's at each time applicable price list.

10.2. Unless otherwise agreed, Novacura is entitled to adjust the Fees on an annual basis. If the increase exceeds the Swedish preliminary Labor Cost Index (LCI) for non-manual workers within industry J ("information and communication services"), Customer shall have the right to terminate the Software and/or Applications with a thirty (30) days' notice period. Novacura shall also have a right to adjust the Fees if there are significant changes in the expenditure for indispensable underlying components.

10.3. Invoices will be issued by Novacura annually in advance and shall be paid within thirty (30) days from date of issue. All prices are exclusive of, and the Customer is responsible for, all fees and taxes, including custom duties, importation fees, sales, use, withholding, gross revenue and like taxes, dues and charges assessed or incurred

in connection with the provision of the Software, Applications, Third Party Products and Maintenance Services under the Agreement. Novacura is entitled to add VAT or sales tax (as applicable under local law) on all invoices. Statutory interest rate will be charged from the due date in case of late payment.

10.4. Payment delayed more than sixty (60) days is considered a material breach of contract, which entitles Novacura to terminate the Agreement with immediate effect unless Customer pays the full amount due within ten (10) days of a written notice from Novacura.

10.5. The Customer shall compensate Novacura for travel and expenses, as well as other similar costs, incurred by Novacura in the performance of the services. The compensation shall be equivalent to the actual cost for Novacura unless otherwise agreed between the Parties.

10.6. If circumstances within the Customer's control causes Novacura additional work or additional costs, Novacura shall be entitled to compensation by the Customer. The compensation shall be calculated in accordance with Novacura's at each time applicable price list.

11. Subcontractors

Novacura may at its own discretion use or engage subcontractors in relation to the Software, Base Applications and Customized Applications. Novacura shall be responsible for the performance and acts of such subcontractors unless the subcontractor has been appointed by the Customer.

12. Infringement

12.1. Novacura will defend the Customer against any claim brought against the Customer by a third party alleging that the Software or Applications infringes such third party's copyright, trademark and trade secret and will indemnify the Customer against any damages awarded by a court of competent jurisdiction, or agreed in a settlement approved by Novacura, arising out of such claim. In the event the Customer has a suit or proceedings brought against it, the Customer shall: (i) notify Novacura without undue delay in writing of any claim, suit or proceeding; (ii) allow Novacura to settle the claim and/or control the defense of any suit or proceedings; and (iii) provide reasonable assistance (at Novacura's expense) to settle the claim or control the defense of any suit or proceeding. In the event that the Software and/or Applications, or any part thereof, is held to constitute an infringement and/or its further use, distribution or other disposal is prohibited or restricted, Novacura shall, at its own expense and at its option, either: (i) procure the licenses necessary for the Customer to exercise the rights and licenses granted hereunder, (ii) replace the infringing Software and/or Applications with non-infringing software or material of equivalent function and performance to the satisfaction of Customer, (iii) modify the Software and/or Applications so that it becomes non-infringing, without materially detracting from function or performance, or (iv) terminate the license and repay the Fees prepaid for the applicable Software and/or Applications with a reduction for any reasonable use of the Software that the Customer may have had.

12.2. Customer will defend Novacura and its affiliates and partners against any claim either (a) brought against Novacura or its affiliates or partners by a third party alleging that (i) any Customer Data or Customer's use of the Software or Applications, (ii) the Customer Software, Customer Application or a third party application provided by Customer, or (iii) the combination of a third party application provided by Customer and used with the Software or Applications, infringes or misappropriates such third party's intellectual property rights, or (b) arising from Customer's use of the Software or Applications in an unlawful manner or in violation of the Agreement, and will indemnify Novacura and its affiliates from any damages awarded by a court of competent jurisdiction, or agreed in a settlement approved by Customer, arising out of such claim. In the event Novacura has a suit or proceedings brought against it, Novacura shall: (i) notify the Customer without undue delay in writing of any claim, suit or proceeding; (ii) allow the Customer to settle the claim and/or control the defense of any suit or proceedings; and (iii) provide reasonable assistance (at Customer's expense) to settle the claim or control the defense of any suit or proceeding.

12.3.   Novacura shall not be liable to the Customer for infringement claims based on the fact that the Software or Applications have been modified, used, operated or combined by the Customer in a manner, to an extent or during a time period for which license was not granted.

12.4.   Novacura shall have no obligation to defend nor indemnify the Customer against any claim pertaining to the use of any Software and/or Application release older than twelve (12) months. Novacura shall have no obligation to defend nor indemnify the Customer against any claim pertaining to the use of any other release of the Software and/or Application than the most recent one, if the infringement may have been avoided by the use of the most recent release.

12.5.   The remedies set forth in this section 12 shall be the Customer's exclusive remedy with regard to infringement claims.

13.   Customer Data

13.1.   The Customer and its Users may, depending on the service, provide Customer Data to Novacura as well as create and modify Customer Data within the products and services provided. The Customer or its Users own all Customer Data. The Customer is responsible for any such Customer Data and the results created from it. The Customer may require Novacura to create and modify Customer Data within the scope of customization or development of Applications. Any such involvement by Novacura shall be clearly outlined in the instructions to Novacura's consultants. Unless specifically agreed otherwise, Novacura has no access to Customer Data.

13.2.   Unless otherwise agreed in the Service Description, the Customer is responsible for back up, on its own computer, equipment or other device, of any Customer Data that Customer store or access via the use of the Software and Applications. Novacura does not guarantee or warrant that any Customer Data that Customer store or access via the use of the Software and Applications will not be subject to inadvertent damage, corruption or loss.

13.3.   As part of providing services to the Customer, Novacura may process Personal Data on behalf of the Customer. The Parties acknowledge that Customer is the data controller and Novacura is the data processor and the Parties shall comply with their respective obligations as set out in the Data Processing Agreement. The Data Processing Agreement is hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data.

13.4.   After the termination of the Agreement or when reasonably requested by the Customer, Novacura shall return all Customer Data to the Customer in the available format and in accordance with Novacura's defined routines. Novacura will charge for this in accordance with its at each time applicable price list. Novacura does not guarantee that the Customer Data could be accessed and used properly without making use of the Software and Applications.

14.   Definitions

14.1.   Unless the context clearly specifies or requires otherwise, the following terms and expressions used in these General Terms shall have the meanings assigned to them as defined below.

"**Acceptable Use Policy**" means the policy describing certain prohibited uses of the Software and Application offered by Novacura.

"**Agreement**" means the Sales Order signed by the Parties, the Main Agreement and all appendices and annexes, including these General Terms.

"**Applications**" means the Base Applications and Customized Applications.

"**Base Applications**" means the standard applications (based on existing workflows) offered by Novacura.

"**Customer**" means the customer specified in the Agreement.

"**Customer Application**" means an application consisting of a modification of a Base Application subject to the conditions set out in section 3.4.

"**Customer Data**" means any data or other information (including personal data) that the Customer, or someone on behalf of the Customer, makes available to Novacura under the Agreement or that is created as a result of the Customer's use of the Software and Applications.

"**Customer Software**" means any software provided by the Customer and used in connection with the Software.

"**Customized Application**" means an application based on workflows that are customized for the Customer. A Customized Application consist of a modification of a Base Application performed by or on behalf of Novacura AB.

"**Defect**" means a material deviation from the specification describing the features and functionality of Software, Base Applications or Customized Applications.

"**Fee(s)**" means the fees for licensing the Software, Applications, Maintenance Services and Third Party Products as specified in the Sales Order.

"**Maintenance Services**" means the maintenance services provided by Novacura pursuant to the applicable version of Novacura's General Terms for Software Maintenance.

"**Maintenance Terms**" means the applicable version of Novacura's General Terms for Software Maintenance.

"**Novacura**" means the supplier specified in the Agreement.

"**Novacura AB**" means the company Novacura AB with reg. no 556675-8156 and company address Björklun-dabacken 10, 436 57 HOVÅS, Sweden which is the owner of any and all intellectual property rights relating to the Software and Applications.

"**Novacura Flow**" means the platform Novacura Flow, designed and developed by Novacura AB. Novacura Flow is provided with various functionalities, such as Novacura Flow Server, Novacura Flow Designer, Novacura Flow Runtime, Novacura Flow Admin and Novacura Flow Portal.

"**Parties**" means Novacura and the Customer jointly.

"**Party**" means Novacura or the Customer individually.

"**Personal Data**" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly.

"**Sales Order**" means a written document entered into by Customer and Novacura which specifies the Software and Applications to be provided to the Customer.

"**Service Commencement Date**" means the service commencement date set out in in the Sales Order.

"**Service Description**" means a description of Novacura's products and services, available at https://www.no-vacura.com.

"**Software**" means (i) Novacura Flow, including any new release or updates thereof, and (ii) local software and technical interfaces, created by or behalf of Novacura AB, which integrate Novacura Flow with the Customer's systems.

"**Subscription Term**" means the term of the Agreement as set out in the Sales Order, including any renewals term.

"**Support Center**" means Novacura's online support center available at http://support.novacura.com as further described in the Service Description.

"**Third Party Products**" means any software provided and/or distributed by Novacura to the Customer to which Novacura AB is not the owner.

"**User**" means a person who is authorized to use the Software on behalf of the Customer or in accordance with an agreement with the Customer.

"**Warranty Period**" means a period of ninety (90) days from the start of the Subscription Term or the Customer's initial use of the Software, whichever is the earliest.

14.2.   Other capitalized words and expressions not defined in these General Terms have the meaning ascribed to them in the Agreement.

_____