



## NovaCore Terms of Use

The terms and conditions detailed below are binding on any use of the System and apply to You from the time that NovaCore provides You with access to the System.

NovaCore reserves the right to change these terms at any time, effective upon the posting of modified terms and will make every effort to communicate these changes to You via email or notification via its Website. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By use of the System, You are deemed to have agreed to these terms and conditions on behalf of any entity for whom you use the System.

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# 1. Definitions and Interpretation

## 1.1 Definitions

In this Agreement:

“Agent” means NovaCore’s affiliates, contractors, third-party suppliers or any other entity that provides goods or services to NovaCore.

“Agreement” means the NovaCore Terms of Use (these terms and conditions), and any other document incorporated by reference.

“Application” means the NovaCore software.

“Authorised User” means persons You have authorised to be Users.

“Back Up” means daily copies of the Data which may be used to restore the lost Data in the event of an error in which Data is destroyed by failures in storage, transmission, processing or other like cause.

“Business Day” means Monday to Friday, excluding National and State Public Holidays, Christmas Day and Boxing Day.

“Business Hours” means 7am to 4pm, Perth time, on any Business Day.

“Claim” means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or received by or against the person.

“Commencement Date” means the date the initial Invoice is paid.

“Concurrent User Access Licence” means a licence grant to use the System as outlined in this Agreement that can be used by any number of Users but limited by the number of simultaneous logins up to the number of licences held.

“Confidential Information” means all information contained within the System or provided to You by NovaCore or its Personnel, including but not limited to designs, concepts, product designs (whether registered or not), trade marks, copyright and rights in the nature of copyright, patents, patterns, drawings, models, computer generated designs or images, any rights under licence, know-how, techniques, technical information and technical drawings, any information marked "confidential" or which NovaCore informs You is confidential or a trade secret, details of and information about NovaCore’s intellectual property and any other commercial information about NovaCore or persons with whom NovaCore deals.

“Data” means any computer file, document or information input, saved or uploaded into an application by NovaCore or by You or with Your authority.

“Defective” in relation to the System, means that it:

- a) does not conform to the Specifications; and/or
- b) has a substantially significant error, defect or malfunction which does not conform with the Specifications; and/or

- c) otherwise does not comply with the essential requirements of this Agreement.

“Document Templates” means complete and detailed MS-Word, MS-Excel or MS-Powerpoint documents provided by NovaCore for the purpose of guiding You towards compliance against a related regulatory framework.

“Event of Insolvency” means:

- a) a "controller" (as defined in section 9 of the Corporations Act 2001), a trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- c) an application (not withdrawn or dismissed within 7 days) is made to a Court of competent jurisdiction for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - i. appointing a receiver, manager, administrator, liquidator or provisional liquidator;
  - ii. winding up or deregistering a corporation; or
  - iii. proposing or implementing a scheme of arrangement other than with the prior approval of the Customer under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act 2001;
- d) any event or conduct occurs which would enable a Court of competent jurisdiction to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- e) any application (not withdrawn or dismissed within 7 days) is made to a Court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - i. a moratorium of any debts of a person;
  - ii. a personal insolvency agreement;
  - iii. any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - iv. any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- f) any agreement or other arrangement of the type referred to in paragraph (e) is ordered, declared or agreed to;
- g) a person becomes insolvent under administration within the meaning of the Corporations Act 2001;

- h) as a result of the operation of section 459F(1) of the Corporations Act 2001, a corporation is taken to have failed to comply with a statutory demand (as defined in the Corporations Act 2001);
- i) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- j) the Commissioner of Taxation issues a notice to any creditor of a person under the Taxation Administration Act 1953 requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice;
- k) anything analogous to anything referred to in paragraphs (a) to (j) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- l) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

“GST” means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

“Insolvency Provision” means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

“Intellectual Property Rights” includes all present and future rights in relation to copyright, trade marks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

“Login” means the identification and password provided to You by NovaCore or as defined by a user with Administrative rights.

“Moral Rights” means the moral rights granted under the Copyright Act 1968, and any similar rights existing under foreign laws.

“Named User Access Licence” means a licence grant to use the System as outlined in this Agreement but limited to a named User.

“NovaCloud” means the NovaCore Software Application supplied in the form of Software as a Service (SaaS) on the NovaCore Cloud Infrastructure.

“NovaCore” means NovaCore Pty Ltd and/or it’s Agents.

“Personnel” of a person means that person's directors, officers, employees, agents, contractors, sub-contractors and their respective personnel.

“Renewed Term” has the same meaning as set out in clause 3.1.4 of this Agreement.

“SPAM” has the same meaning given to the term under the Spam Act 2003.

“Specifications” means the specifications outlined in this Agreement in conjunction with the NovaCore Software Specifications.

“Subscription” means a licence grant to use and access NovaCloud by a named User.

“Support Services” means the services set out in clause 6 of this Agreement.

“System” means the NovaCore software, whether on-premises or as NovaCloud, along with any document templates, printed media, printed materials and online documentation provided by NovaCore.

“Term” means a time period defined by the type of User Access Licence held.

“User” means any person who uses the System.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a) The "Description" section and headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- b) Words in the singular also include the plural and vice versa;
- c) Words importing a gender include other genders;
- d) A reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- e) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- f) "includes" in any form is not a word of limitation.

## 2. Licence Grant

### 2.1 Scope of Licence

The System is licensed, not sold. This Agreement only gives you some rights to use the features included in the System licensed. NovaCore reserve all other rights. Unless applicable law gives you more rights despite this limitation, You may use the System only as expressly permitted under clause 9 of this Agreement.

You agree that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of NovaCore and agree not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of NovaCore as further detailed under clause 10 of this Agreement.

### 2.2 Licence Grant

2.2.1. NovaCore grants the User a non-exclusive, non-transferable licence to use the System subject to the terms and conditions of this Agreement.

2.2.2. You acknowledge and agree that You cannot make a request or claim any compensation with respect to any issue arising from or in connection with the functionality of the System.

2.2.3. You agree that in using the System, You must comply with all reasonable directions with respect to the use of the System, including the installation of updates, which are issued by NovaCore from time to time at its absolute discretion.

2.2.4. You acknowledge that NovaCore may terminate Your access to the System at any time if it has reason to believe the terms of this Agreement have been breached.

## 3. Specifications

### 3.1 Access to the System

3.1.1. NovaCore will supply and You will acquire the System on the terms of this Agreement.

3.1.2. On receipt of payment NovaCore will within 48 hours,

- a) in the case of an on-premises System, install or provide install instructions to You; and
- b) in the case of NovaCloud, provision and configure the System for Your use.

3.1.3. You acknowledge and agree that You have read and understood the Specifications and are satisfied with and have accepted the Specifications. You further acknowledge and agree that You cannot make a Claim or withhold payment with respect to any issue arising from or in connection with the functionality or provision of the System if NovaCore has provided the System substantially in accordance with the Specifications.

3.1.4. You acknowledge and agree that this Agreement will be self-renewing on the anniversary of the Commencement Date,



- a) in the case of on-premises System for a twelve (12) month period (“Renewed Term”); and
- b) in the case of NovaCloud for a one (1) month period (“Renewed Term”)

## 3.2 Training

NovaCore will:

- a) provide reasonable training to enable You and/or Your Personnel to properly operate the System.
- b) provide the training online at the times as agreed between the parties.
- c) provide the initial 60 minutes of training at no additional cost.
- d) provide additional training when requested by You for the fee quoted in the Pricing and Information Guide or as agreed.

## 4. Data Storage

### 4.1 NovaCloud - Data Storage

4.1.1. You acknowledge and agree that your Data will be stored on servers located in multiple Data Centres within the Sydney Metropolitan Area, New South Wales, Australia.

4.1.2. You may request to change the storage location at any time during the Term. You acknowledge and agree that NovaCore will charge You a fee for this change as advised to You by NovaCore.

4.1.3. In the event that You request to change the storage location at any time, NovaCore will use all reasonable endeavours to facilitate that change within a reasonable time. The time involved in changing the storage location will be advised to You by NovaCore.

4.1.4. NovaCore will take all reasonable endeavours to Back Up the Data. Should you obtain a copy of the Data, You agree it is Your sole responsibility to take all reasonable endeavours to Back Up that Data.

### 4.2 On-premises System - Data Storage

4.2.1. You acknowledge and agree that your Data will be stored on your own IT infrastructure, on either a Windows server or personal computer.

4.2.2. You acknowledge and agree it is Your sole responsibility to use all reasonable endeavours to Back Up your NovaCore Data.

## 5. System Availability

### 5.1 NovaCloud - Availability

5.1.1. NovaCore shall use all reasonable endeavours to ensure a 99.9% uptime when providing the System through NovaCloud but is limited in warranty as declared in clause 14 and is limited in liability in accordance with clause 15.

## 5.2 On-premises System - Availability

5.2.1. NovaCore system uptime and availability on on-premises infrastructure is expressly your responsibility. NovaCore is limited in warranty as declared in clause 14 and is limited in liability in accordance with clause 15.

5.2.2. NovaCore shall use all reasonable endeavours through careful design and optimisation to provide continuing availability of the System for the duration of this Agreement, but You expressly acknowledge and accept that NovaCore may, at its absolute discretion and without notice, immediately suspend all or part of the System:

- a) Where there is any interruption resulting directly or indirectly from an electrical storm, tempest, electrical short circuit, power failure, telecommunications failure or fault, acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government action, shortage of suitable parts or any other cause beyond the reasonable control of NovaCore;
- b) Where it is reasonably required to reduce or prevent fraud or interference with the System;
- c) Where NovaCore is required to do so to comply with an order, instruction or request of government, or a court or tribunal, or other such competent body;
- d) Where NovaCore reasonably believes that the terms of this Agreement have been violated by You, Your Personnel or Users.
- e) Where You fail to pay any charges due to NovaCore; or
- f) To withdraw or vary the System.

## 5.3 Connectivity

5.3.1. NovaCore shall use all reasonable endeavours to ensure the connectivity and efficiency of the System. In the event that You are unable to access the System during the term of this Agreement due to any fault arising from NovaCore, NovaCore may, at its absolute discretion, issue You with an amount of credit equal to the time that You could not access the System.

## 6. Support and maintenance

### 6.1 Inclusions

6.1.1. You agree that the System is licensed to You for Your use to the extent of the Subscriptions or Concurrent User Access Licences purchased by You.

6.1.2. NovaCore agrees to use all reasonable endeavours to continuously provide You with support and maintenance services in substantial conformity with the following:

- a) Incremental Updates: These include, but are not limited to, updates arising from changes in government policy, refined interfaces, updated manuals, new features.
- b) Technical Support:

- i. NovaCore agrees to provide unlimited technical support for the System at all times during Business Hours on Business Days by means of email, telephone calls and/or screen sharing software.
- ii. If the issue requiring technical support is determined to be one which arises from or in connection with a product or System not supplied by NovaCore, You acknowledge and accept that You will be charged in accordance with NovaCore's ad-hoc support rate as set out in the Pricing and Information Guide for time and expenses expended in addressing that issue.

## 6.2 Exclusions

6.2.1. You acknowledge and accept that NovaCore will not provide technical support services in respect of:

- a) Third party products and/or services: This includes, but is not limited to email, word processors, operating systems, integrated applications (applications which may integrate with other NovaCore products or services but are not supplied or hosted by NovaCore), internet products or validation products;
- b) Acts by third parties: This includes, but is not limited to, the following:
  - i. Rectification of defects or errors resulting from any modification of the System by any person other than NovaCore Personnel;
  - ii. Rectification of defects or errors resulting from use of the System in combination with equipment other than the designated computer equipment;
  - iii. Rectification of operating errors;
  - iv. Rectification of a fault of computer equipment;
- c) Data Import/Export: Technical support for importing or exporting Data to and from products and services other than NovaCore's products and services.

6.2.2. Where an application or System has been provided by NovaCore free of charge, NovaCore supplies the product or System without warranty and reserves the right to change or withdraw the offering at its sole discretion.

## 6.3 Access to Support

You acknowledge and accept that:

- a) In order to have access to the Support Services, You must have telephone, email and internet access;
- b) NovaCore reserves the right at its absolute discretion to limit or terminate Support Services to customers who use the System in an abusive or fraudulent manner.

## 7. Payment terms

### 7.1 Fees, Invoices and payment

7.1.1. Unless expressly stated otherwise in writing:

- a) The fees payable for the System are set out in the invoice issued to You by NovaCore;
- b) Payment terms are set out in the invoice issued to You by NovaCore;
- c) The number of Subscriptions or Concurrent User Access Licences purchased can be decreased during the Term however no refund will be given for the remainder of the Term;
- d) Any Subscriptions or Concurrent User Access Licences added during the Term will be charged on a pro-rata basis for the period remaining in the Term.
- e) Subscription fees are based on monthly periods that begin on the Commencement Date and each monthly anniversary thereof.
- f) Concurrent User Access Licence fees are based on annual periods that begin on the anniversary of the Commencement Date and each year thereof.

7.1.2. You acknowledge and agree that NovaCore may vary the fees payable on the System from time to time by providing one (1) month notice of such variation.

7.1.3. If NovaCore has omitted any charges in an invoice or if there are any errors in calculation that appear on a NovaCore invoice, NovaCore reserves the right to include those charges on a later invoice.

7.1.4. You are liable for all third party costs arising from or in connection with the provision of the System and associated products and services.

7.1.5. If You dispute any amount charged by NovaCore, You must notify NovaCore in writing of that disputed before then invoice due date and must settle the undisputed portion of that invoice. If You do not notify NovaCore of any disputed amount before the invoice due date, You are deemed to have accepted the invoice as accurate and are liable to pay it in full pursuant to the applicable payment terms.

## 7.2 Consequences of non-payment

7.2.1. If You fail to make payment for any product or System provided to You by NovaCore by the due date as specified by NovaCore on the invoice issued to You in accordance with clause 7.1, NovaCore reserves the right to:

- a) Charge You all costs and expenses incurred in recovering any outstanding amounts owed to NovaCore;
- b) Engage the services of a debt collection organisation, legal practitioners or other entities to assist NovaCore in recovering that debt and add the debt recovery costs to the amount of any outstanding debt, including, but not limited to, costs incurred prior to any legal action, collection agency costs, Court costs, legal costs and search costs;
- c) Suspend the System provided to You until such amounts are paid in full; and/or
- d) Terminate the Agreement with You.

7.2.2. NovaCore will not be responsible for any loss or damage caused by the termination of Your System under clause 7.2.1.

## 8. NovaCore Responsibilities

### 8.1 NovaCore's Obligations

8.1.1. From the Commencement Date, NovaCore will:

- a) provide the System in accordance with this Agreement;
- b) install and configure the System pursuant to the components purchased and identified on invoice;
- c) provide training in accordance with clause 3.2 above; and
- d) provide Support Services for the System in accordance with clause 6.

8.1.2. In the case of NovaCloud NovaCore will in addition to the obligations under clause 8.1.1 above:

- a) maintain Data Back Ups, in accordance with clause 4.1;
- b) use commercially reasonable efforts to make the System available 24 hours a day, 7 days a week, in accordance with clause 5.1 of the Agreement;
- c) provide the System only in accordance with applicable laws and government regulations; and
- d) use all reasonable endeavours to ensure that its Personnel provide a secure environment for the provision of the System and the protection of the Data in accordance with NovaCore Security Statement.

## 9. Customer Responsibilities

### 9.1 Customer Obligations regarding proper use of the System

You agree that in using the System, You must:

- a) Comply with all reasonable directions with respect to the use of the System, which are issued by NovaCore from time to time at its absolute discretion.
- b) Comply with all statutory obligations that are imposed upon You in respect of the collection and use of the Data.
- c) Not use the System to engage in or permit disruptive activities, including but not limited to, circulating any unsolicited publicity or advertising material, propagation of computer worms and viruses, gain unauthorised access to any other computer system, sending harassing, obscene, offensive or threatening electronic mail, forging electronic mail and placing, transmitting or storing any defamatory or pornographic material on the internet.
- d) Not knowingly access or permit any other party to access the System for or in connection with any purpose or activity that is illegal or fraudulent in nature, including but not limited

to, using the System to aid the commission of a crime or infringe upon the rights of a third party.

## 9.2 Customer's Rights and Obligations

### 9.2.1. Subject to this Agreement, You will:

- a) pay NovaCore the fees as and when they fall due pursuant to the payment terms specified by NovaCore;
- b) be solely responsible for the accuracy, quality, integrity and legality of the Data and of the means by which You acquired the Data;
- c) be solely responsible to have the Data presented to NovaCore in a format which is compatible with the System for the purpose of data import (where applicable);
- d) use commercially reasonable efforts to prevent unauthorised access to or use of the System, and notify NovaCore promptly of any such unauthorised access or use;
- e) use the System only in accordance with NovaCore's directions and applicable laws and government regulations; and
- f) ensure that all Login information required to access the System, whether in use or not, is kept secure and confidential and to immediately notify NovaCore of any unauthorised use of that information or any other breach of security.

### 9.2.2. Subject to this Agreement, You shall not:

- a) knowingly or negligently make the System available to anyone other than persons You have authorised to access the System;
- b) sell, resell, rent or lease the System;
- c) impose any further restrictions on the exercise of the rights granted or affirmed to the User, including but not limited to, imposing a licence fee, royalty, or other charge for exercise of rights granted to the User, initiating litigation alleging that any Intellectual Property Rights are infringed by making, using, selling, offering for sale, or importing the System or any portion of it;
- d) use the System to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- e) use the System to store or transmit malicious code;
- f) interfere with or disrupt the integrity or performance of the System or third party Data contained therein; or
- g) attempt to gain unauthorised access to related systems or networks of the System.

## 10. Proprietary rights / Intellectual Property

### 10.1 Ownership of NovaCore Data

10.1.1. NovaCore is the sole proprietor of and retains all Intellectual Property Rights (including but not limited to copyright) embodied in or connected to the System provided to You and any Users pursuant to this Agreement (including but not limited to any images, photographs, animations, video, audio, music, text, objects, “applets” incorporated into the System, and any related documents or software, whether in their original form or otherwise).

10.1.2. Except as expressly permitted by applicable law or pursuant to this Agreement, You must not broadcast, publish or republish, upload to a third party, transmit, post, distribute or otherwise reproduce in any format, reverse engineer, modify, decompile, disassemble or create derivative works of the intellectual property of NovaCore, including the System, without NovaCore’s prior written consent.

10.1.3. Non-transferable permission is granted to You to modify, adapt, use in part or in whole Document Template content as required and to publish, upload to a third party, transmit, post, distribute the content solely for the purposes of compliance.

10.1.4. You agree to not sell, resell, rent or lease Document Templates either in their original form or as modified or adapted by You.

10.1.5. Nothing in this Agreement affects the ownership of Moral Rights in the System.

10.1.6. You acknowledge and agree that this clause survives following the termination of this Agreement.

### 10.2 Ownership and Retention of Customer Data

10.2.1. You acknowledge and agree that:

- a) You have obtained all relevant Intellectual Property Rights, clearances and/or other consents and authorisations over any information such as, but not limited to images, written text, video, software or other content (“Content”) which You post, display, transmit, provide or otherwise make available to NovaCore; and
- b) Notwithstanding clause 10.1 above the Content is Your sole responsibility and NovaCore has no ownership, control or responsibility to You or to any third party for any Content which may infringe any Intellectual Property Rights of a third party.

10.2.2. NovaCore will take all necessary steps to protect Customer Data in its possession against misuse or loss and it will return all such information to the Customer upon written request or termination or expiry of this Agreement.

10.2.3. The data contained in NovaCore remains the property of the paid-up license holder and a copy of the data is available on request.

10.2.4. Upon termination or expiry of this Agreement, a paid-up license holder will receive their data within 48 hours in electronic format.

10.2.5. NovaCore will, after 48 hours of termination or expiry of this Agreement, destroy System data and backups in accord with clause 13.4.

## 10.3 Restrictions

**10.3.1.** NovaCore's intellectual property is used by You and Users with NovaCore's consent pursuant to this Agreement. Upon termination of this Agreement, unless You have NovaCore's written consent, You must immediately cease using NovaCore's Intellectual Property.

**10.3.2.** You agree not to do any act or thing in relation to Data which would cause NovaCore to infringe any party's copyright or Intellectual Property Rights. You indemnify NovaCore against any Claim made or brought against it by a third party alleging that the Data, or Your use of the System infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, and You agree to indemnify NovaCore for any damages awarded in connection with any such Claim, provided that NovaCore promptly gives You written notice of the Claim and gives You sole control of the defence of the Claim and provides to You all reasonable assistance.

**10.3.3.** NovaCore indemnifies You from any Claims brought against You by third parties alleging use of the System as permitted hereunder infringes the Intellectual Property Rights of a third party provided that You promptly give NovaCore written notice of the Claim and give NovaCore sole control of the defence and settlement of the Claim and You provide NovaCore all reasonable assistance.

## 10.4 Suggestions

You acknowledge and accept that NovaCore shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual licence to use or incorporate into the System any suggestions, enhancement requests, recommendations or other feedback provided by You or Users of the System, relating to the operation of the System.

## 11. Confidentiality

### 11.1 Protection of Confidential Information

**11.1.1.** Neither party may, without the prior written consent of the other, disclose the other party's Confidential Information unless it is compelled to do so by law.

**11.1.2.** Each party will take all reasonable steps to ensure that its Personnel do not make public or disclose the other party's Confidential Information.

**11.1.3.** Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

**11.1.4.** You acknowledge and agree that this clause survives following the termination of this Agreement.

## 12. Privacy

### 12.1 Customer Privacy Summary

**12.1.1.** NovaCore agrees to comply at all times with the Australian Privacy Principles contained in Part III to the Privacy Act 1988 (or an applicable privacy code approved by the Federal Privacy Commissioner pursuant to that Act) in the same way and to the same extent that You would have



been required to comply had You been directly responsible for performing the act or practice concerned.

**12.1.2.** For the purpose of this clause, "personal information" means information or an opinion about an individual as defined in Part II-6 of the Privacy Act 1988 which is collected, used, disclosed, stored or handled by NovaCore for the purposes of this Agreement.

**12.1.3.** NovaCore will collect minimal personal information being limited to name, phone number and email address for purposes of:

- a) creating and providing a Login account
- b) for sending System generated emails as part of System functionality and
- c) to enable NovaCore support staff to provide customer training and technical support.

**12.1.4.** NovaCore will not disclose any personal information to a third party for any purpose unless it is compelled to do so by law.

**12.1.5.** NovaCore will not use any personal information for a purpose other than discharging its obligations under this Agreement.

**12.1.6.** NovaCore will take all necessary steps to protect personal information in its possession against misuse or loss and it will return all such information to the Customer after which it will destroy or de-identify such information upon termination or expiry of this Agreement. This clause will survive the termination or expiry of this Agreement.

## 12.2 Privacy Policy

See our Privacy Policy to understand:

- a) the kind of information we collect and hold;
- b) how and when we may collect and hold personal information from you;
- c) the purposes for which we collect, hold use and disclose your personal information and what happens if we don't collect the information;
- d) the circumstances where we are likely to disclose information to overseas recipients and in which countries they are located; and
- e) how you can contact us to access or correct personal information which we hold about you or complain about our collection, handling or disclosure of your information.

## 13. Termination, breach, default

### 13.1 Termination by You

**13.1.1.** If You intend to terminate this Agreement as a result of a breach of the Agreement by NovaCore, You agree that Your exclusive remedy is described at 16.1.

**13.1.2.** You may terminate this Agreement at any time by giving NovaCore at least thirty (30) days written notice. You acknowledge that on termination of this Agreement, You forfeit any Claim to any refund for any amounts for which You have been charged, regardless of whether such amounts have been paid.

**13.1.3.** You further acknowledge and agree that You are liable to pay any outstanding subscription charges for services already delivered unless termination is as a result of a breach of the Agreement by NovaCore.

**13.1.4.** If You terminate the Agreement without complying with Your obligations under clause 9, NovaCore may suspend or terminate Your access to the System immediately.

## 13.2 Termination by NovaCore

**13.2.1.** NovaCore may terminate this Agreement at any time by giving You at least thirty (30) days written notice. If NovaCore terminates this Agreement in this way and You are not in breach of this Agreement, any charges paid by You will be refunded on a pro-rata basis of the amount paid by You for the time in which You will not be provided with the System.

**13.2.2.** NovaCore may terminate this Agreement immediately if:

- a) You do not pay outstanding charges by the due date as specified in the invoice to You issued by NovaCore;
- b) You are in breach of any of the express or implied terms of this Agreement and, where the breach is capable of being remedied, You have failed to remedy the breach within 7 days after notice by NovaCore;
- c) In NovaCore's view, it appears that You have undergone or are likely to undergo an Event of Insolvency;
- d) If NovaCore reasonably suspects fraud or misuse of the System by You; or
- e) Any Claim is made that infringes the rights of a third party or exposes NovaCore to liability to any third party, or prosecution for an offence or to a statutory penalty.

## 13.3 Automatic Termination

You acknowledge and accept that this Agreement will terminate automatically, without the requirement for NovaCore to take any action whatsoever, if either party undergoes an Event of Insolvency.

## 13.4 Consequences of Termination

**13.4.1.** Upon termination or expiry of this Agreement, You must immediately cease access to the System.

**13.4.2.** Once all outstanding charges are paid in full, NovaCore will supply You with the Data in electronic format after which all data and backups will be destroyed.

13.4.3. Termination or expiry of this Agreement will not affect the operation of any accrued rights or liabilities of either party, nor any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

## 14. Warranties & Disclaimers

### 14.1 NovaCore's Warranties

14.1.1. NovaCore warrants that the System shall perform substantially in accordance with the Specifications.

14.1.2. For any breach of the warranty at clause 14.1.1 above, Your exclusive remedy is that described at 16.1.

### 14.2 Disclaimer

Except as expressly provided in this Agreement, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by law.

## 15. Limitation of Liability and Indemnity

### 15.1 Limitation of Liability

You acknowledge and accept that:

15.1.1. Subject to the Competition and Consumer Act 2010 or other applicable legislation, NovaCore's total liability for any loss, damage or reliance shall be limited to:

- a) In the case of goods, either replacement of goods, repair of goods, or a refund of the price paid for the goods (as determined by NovaCore); or
- b) In the case of services, either supply of the services again or a refund of the price paid for the services (as determined by NovaCore).

15.1.2. NovaCore is not liable or in default, delay or failure in performance under this Agreement for any interruption resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government action, shortage of suitable parts or other cause beyond the reasonable control of NovaCore.

15.1.3. All warranties, conditions and representations, whether express or implied (other than express warranties stated by NovaCore in writing), are excluded except where NovaCore is by law unable to exclude or limit liability. To the fullest extent permitted by law, NovaCore is not liable to You for loss of profit or other economic loss, indirect, special, consequential, general or similar damages arising under any order, or for negligence by NovaCore, or for any claim made against You by any other party even if NovaCore has been advised of the possibility of such claim.

15.1.4. You expressly acknowledge and agree that delays in the provision of technical support may occur for various reasons, including but not limited to, volume and operational reasons. You agree to hold NovaCore harmless against any such delays.

15.1.5. You expressly acknowledge and agree that NovaCore, its Personnel, affiliates, contributors, third party content providers, Agents and licensors are not liable to You for any direct, indirect, incidental, special consequential or exemplary damages incurred by You through Your use of the System including but not limited to loss of Data and breach of Data security.

## 15.2 Indemnity

You will indemnify NovaCore in respect of any Claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by NovaCore (including, but not limited to, economic loss and all legal costs and disbursements on a full indemnity basis) caused by You and/or any wilful, illegal or negligent act or omission by You.

## 15.3 Non essential System

15.3.1. The parties acknowledge and agree that performance of NovaCore's obligations under this Agreement does not constitute an essential System for the purposes of the law relating to Insolvency Provision.

15.3.2. Notwithstanding clause 15.3.1 above, if NovaCore is held to be providing an essential System in a relevant sense and NovaCore is required by any person or Court of competent jurisdiction to continue to abide by its obligations under this Agreement despite a breach of this Agreement by You, then You acknowledge that the You will be charged at NovaCore's ordinary rates immediately upon notification by NovaCore to You to that effect.

## 16. Dispute Resolution & Remedies

### 16.1 Dispute Resolution Process

If a dispute arises out of or relates to this Agreement, except where urgent interlocutory relief is sought, neither party may commence legal proceedings unless:

16.1.1. The party claiming a dispute has given written notice of the dispute to the other; and

16.1.2. Both parties endeavour, in good faith, to resolve the dispute expeditiously by any means upon which they mutually agree.

### 16.2 If Dispute Unresolved

If the dispute remains unresolved within 30 days after notice has been given under 16.1, the parties agree that a mediator will be appointed by the President of the Law Institute of Victoria or his/her nominee and the parties will bear the costs associated with the mediation equally. If the dispute is not resolved via mediation, either party may institute legal proceedings concerning the subject matter of the dispute.

### 16.3 Legal Representation

During any mediation or other legal proceedings, both parties may be represented by a duly qualified legal practitioner.

## 17. General

### 17.1 No exclusivity

The parties acknowledge that this is a non-exclusive arrangement. Therefore, NovaCore is permitted to provide the same or similar System or related products or services to any other person.

## 17.2 Whole agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to subject matter. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

## 17.3 Variation

NovaCore reserves the right to unilaterally vary this Agreement from time to time in its absolute discretion by providing reasonable written notice to You of the variation. You acknowledge and agree that publication of any changes made by NovaCore to this Agreement on NovaCore's website will constitute reasonable notice to You of those changes.

## 17.4 Governing Law and Jurisdiction

This Agreement is governed by and construed in accordance with the laws of the State of Western Australia, Australia, as if performed wholly within the state and without giving effect to the principles of conflict of law. The parties hereby voluntarily submit to the exclusive jurisdiction of the Courts of Western Australia.