

Software as a Service Agreement

This Nicoya Software As A Service Agreement (the “**Agreement**”) is entered into as of **[X]** (“**Effective Date**”), between Nicoya Lifesciences Inc. (“**Nicoya**”), with its principal place of business located at B-29 King Street East, Kitchener, ON, Canada N2G 2K4 and **[Legal Name of Customer]** (the “**Customer**”), with its principal address located at **[Customer Address]**. Each of Nicoya and the Customer will individually be referred to as a “**Party**” and jointly as the “**Parties**”.

This Agreement sets forth the terms and conditions that govern the provision and use of the Nicosystem SaaS Services to design, run and analyze experiments and generate reports from any analysis or multiple analyses of experimental results arising from Customer’s use of the Nicoya’s Goods. This Agreement applies solely to Customer’s access to and use of the Nicosystem SaaS Services; this Agreement does not apply to Customer’s purchase or use of Nicoya’s Goods (as defined in Nicoya’s Terms and Conditions of Sale or Services) or Services (as defined in Nicoya’s Terms and Conditions of Sale or Services), which are subject to Nicoya’s Terms and Conditions of Sale (see <https://nicoyalife.com/nicoya-terms-and-conditions/terms-of-sale/>).

1. Definitions

Capitalized terms used in this Agreement have the meaning ascribed to them in the preamble or in this Section 1 as follows:

- (a) “**Aggregated Data**” has the meaning set out in Section 3(a).
- (b) “**Agreement**” has the meaning set out in the preamble.
- (c) “**Confidential Information**” has the meaning set out in Section 8(a).
- (d) “**Customer**” has the meaning set out in the preamble.
- (e) “**Customer Data**” means any data, information, content, records, and files that the Customer (or any of its Permitted Users) loads, receives through, transmits to or enters into the Nicosystem SaaS Services, including but not limited to Personal Information.
- (f) “**Customer User Account**” has the meaning set out in Section 5.
- (g) “**Discloser**” has the meaning set out in Section 8(a).
- (h) “**Feedback**” has the meaning set out in Section 3(c).
- (i) “**Fees**” has the meaning set out in Section 7(a).
- (j) “**Force Majeure Event**” has the meaning set out in Section 12(g).
- (k) “**Licensed Third Party Technology**” means third party technology that is licensed under separate license terms and not under this Agreement.



- (l) **“Modifications”** means modifications, improvements, customizations, patches, bug fixes, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations, and **“Modify”** has a corresponding meaning.
- (m) **“Nicosystem SaaS Services”** means services through which Nicoya hosts and makes available the Nicosystem solution to design, run and analyze experiments and generate reports from any analysis or multiple analyses of experimental results arising from Customer’s use of Nicoya’s Goods or Services as described further in an Order Form and all Modifications to the foregoing. The term “Nicosystem SaaS Services” includes the Nicoya Software and Support Services.
- (n) **“Nicoya Software”** means Nicoya’s software product which is a tool to allow the Customer to design, run and analyze experiments and generate reports from any analysis or multiple analyses of experimental results arising from Customer’s use of Nicoya’s Goods **[or Services]**, made available under the name “Nicosystem”, and any updates provided as part of the Nicosystem SaaS Services.
- (o) **“Order Form”** Customer purchase order, Nicoya quote or any additional order form that references this Agreement and that is executed by both Parties.
- (p) **“Party”** and **“Parties”** has the meaning set out in the preamble.
- (q) **“Permitted User”** has the meaning set out in Section 5.
- (r) **“Personal Information”** has the meaning set out in Section 4(a).
- (s) **“Privacy Laws”** has the meaning set out in Section 4(a).
- (t) **“Publicity”** has the meaning set out in Section 12(b).
- (u) **“Recipient”** has the meaning set out in Section 8(a).
- (v) **“Support Services”** has the meaning set out in Section 6.
- (w) **“Term”** has the meaning set out in Section 11(a).
- (x) **“Website”** means any websites used by Nicoya to provide the Nicosystem SaaS Services, including the website located at www.nicosystem.io.

2. **Nicosystem SaaS Services**

- (a) Provisioning of the Nicosystem SaaS Services. Subject to the Customer’s and its Permitted Users’ compliance with the terms and conditions of this Agreement, Nicoya will make the Nicosystem SaaS Services available to the Customer during the Term solely for use by Customer in connection with its internal research projects and for no other purpose. The Customer is responsible for identifying and authenticating all Permitted Users, for ensuring only Permitted Users access and use the Nicosystem SaaS Service, and for Permitted Users’ compliance with this Agreement.
- (b) Restrictions on Use. The Customer will not itself, nor will it permit others to:



- (i) sub-license, sell, rent, lend, lease or distribute the Nicosystem SaaS Services or any intellectual property rights therein, or otherwise make the Nicosystem SaaS Services available to anyone other than Permitted Users;
 - (ii) use or access the Nicosystem SaaS Services (A) in violation of any applicable law or intellectual property right, (B) in a manner that threatens the security or functionality of the Nicosystem SaaS Services, or (C) for any purpose or in any manner not expressly permitted in this Agreement;
 - (iii) use the Nicosystem SaaS Services to create, collect, transmit, store, use or process any Customer Data other than in accordance with this Agreement, including to:
 - (A) upload to the Nicosystem SaaS Services or otherwise use the Nicosystem SaaS Services in connection with any documents, information or data that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
 - (B) upload to the Nicosystem SaaS Services or otherwise use the Nicosystem SaaS Services in connection with any documents, information or data that the Customer does not have the lawful right to create, collect, transmit, store, use or process; or
 - (C) upload to the Nicosystem SaaS Services or otherwise use the Nicosystem SaaS Services in connection with any documents, information or data that violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity);
 - (iv) Modify the Nicosystem SaaS Services;
 - (v) reverse engineer, de-compile or disassemble the Nicosystem SaaS Services;
 - (vi) remove or obscure any proprietary notices or labels on the Nicosystem SaaS Services, including brand, copyright, trademark and patent or patent pending notices;
 - (vii) access or use the Nicosystem SaaS Services for the purpose of building a similar or competitive product or service;
 - (viii) access or use the Nicosystem SaaS Services for any purpose other than internal research projects, including for any commercial purpose; or
 - (ix) perform any vulnerability, penetration or similar testing of the Nicosystem SaaS Services.
- (c) Suspension of Access; Scheduled Downtime; Modifications. Nicoya may from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity, under this Agreement:
- (i) suspend the Customer's access to or use of the Nicosystem SaaS Services:



- (A) for scheduled maintenance;
 - (B) due to a Force Majeure Event;
 - (C) if Nicoya believes in good faith that the Customer or any Permitted User has violated any provision of this Agreement; or
 - (D) to address any emergency security concerns;
 - (E) if required to do so by a regulatory body or as a result of a change in applicable law; and
- (ii) make any Modifications to the Nicosystem SaaS Services.
- (d) Subcontracting. Nicoya may engage third parties to provide the Nicosystem SaaS Services, including hosting providers. Nicoya may change its hosting providers at any time. Customer's use of the Nicosystem SaaS Services is subject to any applicable restrictions imposed by the hosting provider. Notwithstanding any other provision of this Agreement, Nicoya shall not be liable for any problems, failures, defects or errors with the Nicosystem SaaS Services to the extent caused by the hosting provider. Customer acknowledges that the fees payable for the Nicosystem SaaS Services reflect the fact that Nicoya is not responsible for the acts and omissions of the hosting provider.

3. Ownership; Reservation of Rights

- (a) The Customer retains all ownership and intellectual property rights in and to the Customer Data. The Customer grants to Nicoya a nonexclusive, worldwide, royalty-free, irrevocable, sublicensable, and fully paid-up right to access, collect, use, process, store, disclose and transmit the Customer Data to: (i) provide the Nicosystem SaaS Services; (ii) improve and enhance the Nicosystem SaaS Services and its other offerings; and (iii) produce data, information or other materials that are not identified or identifiable as relating to a particular individual or organization (such data, information and materials, the "**Aggregated Data**"). Nicoya may use, process, store, disclose and transmit the Aggregated Data for SaaS any purpose and without restriction or obligation to the Customer of any kind.
- (b) Nicoya or its licensors retain all ownership and intellectual property rights in and to: (i) the Nicosystem SaaS Services; (ii) anything developed or delivered by or on behalf of Nicoya under this Agreement; and (iii) any Modifications to the foregoing (i) and (ii).
- (c) To the extent that the Customer or any Permitted User submits ideas, suggestions, documents, or proposals regarding the Nicosystem SaaS Services to Nicoya ("**Feedback**"), the Customer acknowledges and agrees that:
- (i) The Feedback does not contain confidential or proprietary information and Nicoya is not under any obligation of confidentiality with respect to the Feedback; and
 - (ii) Nicoya will be entitled to use, commercialize or disclose (or to choose not to use, commercialize, or disclose) such Feedback for any purpose, in any way, in any manner, and to anyone worldwide without any compensation or reimbursement of any kind to the Customer for such use.



- (d) All rights not expressly granted by Nicoya to the Customer under this Agreement are reserved by Nicoya.

4. Privacy and Anti-Spam

- (a) Personal Information. Each Party will comply with all applicable federal, state and local laws, rules and regulations concerning the privacy and security of personally identifiable information (“**Privacy Laws**”). The Parties will provide reasonable assistance to each other in order to allow the Parties to comply with their respective obligations under Privacy Laws. The Customer understands that personally identifiable information (“**Personal Information**”), including the Personal Information of Permitted Users, will be treated in accordance with Nicoya’s privacy policy located at <https://nicoyalife.com/privacy-policy/>.
- (b) Nicoya Obligations. To the extent that Nicoya receives Personal Information in the course of providing the Nicosystem SaaS Services under this Agreement, Nicoya will:
 - (i) only use Personal Information for the purposes of providing and improving the Nicosystem SaaS Services in accordance with the Agreement and as otherwise agreed by the Customer in writing from time to time;
 - (ii) not disclose any Personal Information to any third party without the prior written consent of the Customer;
 - (iii) where any disclosure or transfer of Personal Information is required by law, promptly notify the Customer in writing before complying with any such requirement for disclosure (except where legally prohibited to do so);
 - (iv) implement physical, technical and administrative and other organizational measures to safeguard the Personal Information against loss, theft, damage or unauthorized or unlawful access or processing;
 - (v) limit access to Personal Information only to those employees and sub-processors who need to have access to the Personal Information for the purposes of Nicoya rendering the Nicosystem SaaS Services under this Agreement;
 - (vi) notify the Customer at first reasonable opportunity upon Nicoya becoming aware of, or suspecting, any loss, theft, damage or unauthorized or unlawful access or processing, and comply with all instructions of the Customer in connection therewith;
 - (vii) enter into a written agreement with each sub-contractor or third party that has access to Personal Information that imposes obligations on the sub-contractor or third party that are substantially similar to those imposed on Nicoya under this Section 4; and
 - (viii) upon the termination of this Agreement, delete (or, upon the written instruction of the Customer, securely dispose of) all Personal Information in the possession or control of Nicoya (subject to a legal requirement to maintain such Personal Information or Nicoya’s record retention policies).



- (c) Customer Obligations. The Customer represents, warrants and covenants that it has and will continue to maintain all necessary authority and consent under applicable Privacy Laws to transfer Personal Information to Nicoya and for the purposes of Nicoya and its subcontractors performing the Nicosystem SaaS Services hereunder.

5. Customer User Account

Upon the Customer's request, Nicoya will issue one or more accounts (each, a "**Customer User Account**") to the Customer for use by one or more individuals who are employees or independent contractors of the Customer that the Customer wishes to have access to and use of the Nicosystem SaaS Services (each, a "**Permitted User**"). The Customer will ensure that Permitted Users only use the Nicosystem SaaS Services through the Customer User Account. The Customer will not allow any Permitted User to share the Customer User Account with any other person. The Customer will promptly notify Nicoya of any actual or suspected unauthorized use of the Nicosystem SaaS Services. Nicoya reserves the right to suspend, deactivate, or replace the Customer User Account if it determines that the Customer User Account may have been used for an unauthorized purpose. The Customer will ensure that all individual users of the Nicosystem SaaS Services, including Permitted Users, are contractually bound to terms and conditions with the Customer that are no less restrictive or protective of Nicoya's rights than those set forth in this Agreement.

6. Support

The Customer will generally have access to Nicoya's technical support services ("**Support Services**") by submitting support requests at support@nicoyalife.com. Real-time support is available between 9:00 am to 5:00 pm EST Monday through Friday, excluding statutory and civic holidays observed in Kitchener, Ontario.

7. Fees and Payment

- (a) Fees. The Customer will pay to Nicoya the fees described in any Order Form (the "**Fees**"). Unless otherwise noted on an Order Form, all Fees are identified in U.S. dollars and are payable in advance.
- (b) Changes to the Fees. Nicoya reserves the right to change the Fees and institute new charges on each anniversary of the Term upon providing not less than 60 days prior notice to the Customer.
- (c) Invoicing. Nicoya will prepare and send to the Customer, at the then-current contact information on file with Nicoya, an invoice for any Fees that have become due and payable. Unless otherwise expressly stipulated in an invoice, the Customer will pay all invoiced amounts within 30 calendar days of the invoice date.
- (d) Disputed Invoices or Charges. If the Customer believes Nicoya has charged or invoiced the Customer incorrectly, the Customer must contact Nicoya no later than 15 days after having been charged by Nicoya or receiving such invoice in which the error or problem appeared in order to request an adjustment or credit. In the event of a dispute, the Customer will pay any undisputed amounts in accordance with the payment terms herein, and the Parties will discuss the disputed amounts in good faith in order to resolve the dispute.



- (e) Late Payment. The Customer may not withhold or setoff any amounts due under this Agreement. Nicoya reserves the right to suspend the Customer's access to the Nicosystem SaaS Services until all due and undisputed amounts are paid in full. Any late payment will be increased by the costs of collection (if any) and will incur interest at a rate equal to the lesser of one and half percent (1.5%) compounded monthly and the maximum rate of interest allowable under applicable law, from the original due date until full payment has been made by Customer or on Customer's behalf. For clarity, this late payment fee is in addition to any other remedies Nicoya may have under applicable law.
- (f) Taxes. The Fees do not include applicable sales, use, value-added, or other taxes. The Customer will be responsible for and pay all applicable taxes, duties, tariffs, assessments, export and import fees or similar charges, including any applicable interest and penalties payable in connection with the transactions contemplated by this Agreement, other than taxes based on the net income or profits of Nicoya.
- (g) Suspension. Any suspension of the Nicosystem SaaS Services by Nicoya pursuant to this Agreement will not excuse the Customer from its obligation to make payments under this Agreement.

8. Confidential Information

- (a) Definitions. For the purposes of this Agreement, a Party or its affiliates, customers, employees, licensors or suppliers receiving Confidential Information (as defined below) will be the "**Recipient**", the Party disclosing such information will be the "Discloser" and "**Confidential Information**" of the Discloser means any and all information of the Discloser or any of its licensors that has or will come into the possession or knowledge of the Recipient in connection with or as a result of entering into this Agreement, including information concerning the Discloser's past, present or future customers, suppliers, technology or business. Where the Discloser is the Customer, Confidential Information includes Customer Data. Notwithstanding the foregoing, except with respect to Personal Information, Confidential Information does not include: (i) information already known or independently developed by the Recipient without access to the Discloser's Confidential Information as established by competent documentary evidence; (ii) information that is publicly available through no wrongful act of the Recipient; or (iii) information received by the Recipient from a third party who was free to disclose it without confidentiality obligations.
- (b) Confidentiality Covenants. The Recipient hereby agrees that during the Term and at all times following the Term it will not, except to exercise its license rights or perform its obligations under this Agreement: (i) disclose Confidential Information of the Discloser to any person, except to its own personnel or affiliates that have a "need to know" and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writing; or (ii) use Confidential Information of the Discloser. The Recipient will not alter or remove from any Confidential Information of the Discloser any proprietary legend. Each Party will take industry standard precautions to safeguard the other Party's Confidential Information, which will in any event be at least as stringent as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.



- (c) Exceptions to Confidentiality. Notwithstanding Section 8(b), the Recipient may disclose the Discloser's Confidential Information: (i) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure; (ii) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party's business provided, that, in each case, that any such person is obligated by applicable professional or ethical obligations) at least as restrictive as those set forth in this Section 8; or (iii) in the case of Nicoya, to potential assignees, acquirers or successors of Nicoya if and to the extent such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of Nicoya. provided, that, in each case, that any such person has agreed in writing prior to any disclosure to be bound by terms of confidentiality and non-use at least as restrictive as those set forth in this Section 8.

9. **Warranty; Disclaimer; Indemnity**

- (a) Customer Warranty. The Customer represents and warrants to, and covenants with Nicoya that the Customer Data will only contain Personal Information in respect of which the Customer has provided all notices and disclosures (including to each Permitted User), obtained all necessary third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable Nicoya to provide the Nicosystem SaaS Services, including with respect to the collection, storage, access, use, disclosure, processing and transmission of Personal Information, which may include transmissions by or to Nicoya and to or from all applicable third parties.
- (b) GENERAL DISCLAIMER. NICOYA DOES NOT WARRANT THAT THE NICOSYSTEM SAAS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE NICOSYSTEM SAAS SERVICES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE NICOSYSTEM SAAS SERVICES (OR ANY PART OF THEM), AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY NICOYA SAAS TO THE CUSTOMER ARE PROVIDED "AS IS" AND "AS AVAILABLE". ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY LICENSED THIRD PARTY TECHNOLOGY IS STRICTLY BETWEEN THE CUSTOMER AND THE THIRD PARTY.
- (c) IMPLIED DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NICOYA HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WHETHER ARISING FROM



STATUTE, OR OTHERWISE IN LAW, OR OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, NICOYA EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT (i) ANY DATA OR INFORMATION PROVIDED TO THE CUSTOMER IN CONNECTION WITH THE CUSTOMER'S USE OF THE NICOSYSTEM SAAS SERVICES (OR ANY PART OF THEM) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY THE CUSTOMER FOR ANY PURPOSE WHATSOEVER, OR (ii) THAT CUSTOMER WILL ACHIEVE COMPLIANCE WITH ANY LAWS, REGULATIONS OR INDUSTRY STANDARDS APPLICABLE TO CUSTOMER THROUGH USE OF THE NICOSYSTEM SAAS SERVICES.

- (d) Customer Indemnity. The Customer will defend, indemnify and hold harmless Nicoya, its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all third party (including Permitted Users) claims (including damages, recoveries, deficiencies, interest, penalties and legal fees), directly or indirectly arising from or in connection with: (i) the Customer Data; (ii) the Customer's breach of any of the Customer's obligations, representations, warranties or covenants under this Agreement; (iii) Customer's intentional or negligent introduction of computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data into the Nicosystem SaaS Services; or (iv) use of the Nicosystem SaaS Services (or any part of them) by the Customer or any Permitted User in combination with any third party software, application or service. The Customer will fully cooperate with Nicoya in the defense of any claim defended by the Customer pursuant to its indemnification obligations under this Agreement and will not settle any such claim without the prior written consent of Nicoya.
- (e) Nicoya Indemnity. Nicoya will indemnify and defend the Customer its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all third party claims (including damages, recoveries, deficiencies, interest, penalties and legal fees) directly or indirectly arising from or in connection with any claim by a third party alleging that:
- (i) the Nicosystem SaaS Services; or
 - (ii) the access to or use by the Customer or any Permitted User of the Nicosystem SaaS Services as permitted pursuant to this Agreement,
- infringes, violates or misappropriates any intellectual property right of any person. The obligations of Nicoya in this subsection (e) will not apply to the extent that a claim by a third party is: (i) based on the unauthorized use by the Customer (or any Permitted User) of the Nicosystem SaaS Services in a manner not permitted by this Agreement, if such claim would not have arisen but for such unauthorized use by the Customer (or its Permitted Users); or (ii) based on the Modification of any deliverables by or on behalf of the Customer in a manner not permitted by this Agreement, if such claim would not have arisen but for such Modification.

10. Limitation of Liabilities

The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:



- (a) AMOUNT. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF NICOYA IN CONNECTION WITH OR UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID BY THE CUSTOMER FOR THE NICOSYSTEM SAAS SERVICES IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL NICOYA'S THIRD PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.
- (b) TYPE. IN NO EVENT WILL NICOYA BE LIABLE TO THE CUSTOMER OR ANY PERMITTED USER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, THE COST OF LABOR, REQUALIFICATION, DELAY, BUSINESS INTERRUPTION, COSTS FOR THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR LOSS OF PROFITS, SAVINGS, DATA, USE OR GOOD WILL, EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.
- (c) CUSTOMER RELEASES, RELINQUISHES AND DISCHARGES AND AGREES TO INDEMNIFY, PROTECT, AND SAVE HARMLESS NICOYA LIFESCIENCES, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF PERSONS (WHETHER THEY BE THIRD PERSONS, CONTRACTORS, OR EMPLOYEES OF EITHER OF THE PARTIES HERETO) AND ANY LOSS OF OR DAMAGES TO PROPERTY (WHETHER THE SAME BE THAT OF EITHER OF THE PARTIES HERETO OR THIRD PARTIES) CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR IN CONNECTION WITH ANY USE OF THE SAAS SERVICES BY CUSTOMER, ITS PERMITTED USERS, AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, AND AFFILIATES THAT IS INCONSISTENT WITH NICOYA LIFESCIENCES' INSTRUCTIONS AND SPECIFICATIONS REGARDING SUCH SAAS SERVICES OR ANY OTHER MISUSE OR ABUSE OF SUCH SAAS SERVICES. CUSTOMER FURTHER AGREES TO DEFEND ANY SUIT OR ACTION COVERED BY THIS PARAGRAPH BROUGHT AGAINST NICOYA LIFESCIENCES, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, AND AFFILIATES, FOR ANY ALLEGED LOSS, DAMAGE, INJURY TO, OR DEATH OF, PERSONS OR PROPERTY LOSS OR PATENT OR TRADEMARK INFRINGEMENT AND TO PAY ALL DAMAGES, COSTS, AND EXPENSES, INCLUDING ATTORNEY'S FEES ARISING OUT OF, OR IN CONNECTION WITH ANY USE OF THE SAAS SERVICES BY CUSTOMER, ITS PERMITTED USERS, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, AND AFFILIATES THAT IS INCONSISTENT WITH NICOYA LIFESCIENCES' INSTRUCTIONS AND SPECIFICATIONS REGARDING SUCH SAAS SERVICES OR ANY OTHER MISUSE OR ABUSE OF SUCH SAAS SERVICES.



11. Term and Termination

- (a) Term. This Agreement will commence on the Effective Date and continue to be in effect for a period of one year (the “**Initial Term**”). The Agreement will automatically renew for successive one year terms (each a “**Renewal Term**”, the Initial Term and the Renewal Term(s), if any, collectively the “**Term**”) unless either Party provides the other Party with written notice of its intention not to renew not less than 30 days prior to the end of the then current Initial or Renewal Term.
- (b) Termination for Convenience. Nicoya may terminate this Agreement at any time by providing at least 30 days’ advance written notice to the other Party.
- (c) Termination for Cause. Either Party may, in addition to other relief, terminate this Agreement if the other Party commits a material breach of this Agreement and fails within fifteen (15) calendar days of a payment breach or thirty (30) calendar days of a non-payment breach after receipt of written notice of such breach to correct such material breach.
- (d) Transition Services. Upon termination of this Agreement, the Customer will immediately cease accessing or using the Nicosystem SaaS Services. Within thirty (30) calendar days following termination, Nicoya will, at the Customer’s option, return to the Customer or delete or otherwise render inaccessible any Customer Data that remains in the hardware or systems used by Nicoya to provide the Nicosystem SaaS Services.
- (e) Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 3 (Ownership; Reservation of Rights), Section 4 (Privacy), Section 7 (Fees and Payment), Section 8 (Confidential Information), Section 9 (Warranty; Disclaimer; Indemnity), Section 10 (Limitation of Liabilities), Section 11(e) (Survival), and Section 12 (General Provisions).

12. General Provisions

- (a) Notices. Notices sent to either Party will be effective when delivered in writing and in person or by email, one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the Party to whom a notice is being given. Notices must be sent: (i) if to Nicoya, to the following address:

B-29 King Street East

Kitchener, ON, N2G 2K4

Attention: **[INSERT TITLE]**

Email: **[INSERT EMAIL ADDRESS]**

and (ii) if to the Customer, to the current postal or email address that Nicoya has on file with respect to the Customer. Nicoya may change its contact information by posting the new contact information on the Website or by giving notice of them to the Customer. The



Customer is solely responsible for keeping its contact information on file with Nicoya current at all times during the Term.

- (b) Publicity. Notwithstanding any other term of this Agreement, Nicoya may refer to the Customer as a customer of Nicoya on Nicoya's Website and other online channels (collectively, "Publicity"). Nicoya may use the Customer's name, logo and trademark in conjunction with any Publicity. Nicoya will obtain Customer's written permission prior to use of Customer's name, logo or trademarks in press or marketing releases, publications, presentations, case studies and other public statements. The Customer grants Nicoya a limited, fully paid-up, non-exclusive, non-transferable (except in connection with Section 12(c), and non-sublicensable license to use its name, logo and trademarks in connection with any Publicity. Customer may revoke such license at any time; provided, Nicoya will not be obligated to remove uses of Customer's name, logo and trademarks on materials created prior to such termination.
- (c) Assignment. The Customer will not assign this Agreement to any third party without Nicoya's prior written consent. Nicoya may assign this Agreement or any rights under this Agreement to an affiliate or any successor to all or substantially all of Nicoya's assets, business or stock to which this Agreement relates without the Customer's consent. This Agreement will inure to the benefit of and be binding upon the Parties, their permitted successors and permitted assignees.
- (d) Governing Law and Attornment. This Agreement and any action related thereto will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in the Province of Ontario, and irrevocably agree to the exclusive personal jurisdiction and venue of the courts sitting in the Province of Ontario. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This choice of jurisdiction does not prevent Nicoya from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- (e) Export Restrictions. The Customer will comply with all export laws and regulations that may apply to its access to or use of the Nicosystem SaaS Services.
- (f) Construction. Except as otherwise provided in this Agreement, the Parties' rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms "consent" or "discretion", means the right of a Party to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to the other Party.
- (g) Force Majeure Event. Neither Party will be liable for delays caused by any event or circumstances beyond that Party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes, slowdowns, walkouts or other labour problems, Internet service failures or delays, cyberattacks, or the unavailability or Modification by third parties of telecommunications or hosting



infrastructure or third party software or websites or changes in laws preventing or limiting the provision of the services (“**Force Majeure Event**”).

- (h) Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be invalid, illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.
- (i) Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- (j) Independent Contractors. Nicoya’s relationship to the Customer is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have and neither Party will represent to any third party that it has, any authority to bind the other Party.
- (k) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other communications between the Parties, whether written or oral.
- (l) Amendments. No amendment, supplement, modification, waiver, or termination of this Agreement and, unless otherwise expressly specified in this Agreement, no consent or approval by any Party, will be binding unless executed in writing by the Party or Parties to be bound.
- (m) English Language. It is the express wish of the Parties that this Agreement and all related documents be drawn up in English. **[C’est la volonté expresse des parties que la présente convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.]**

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IN WITNESS OF WHICH, the Parties' authorized representatives have executed this Agreement as of the Effective Date.

NICOYA LIFESCIENCES INC.

[LEGAL NAME OF THE CUSTOMER]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____