

This Subscription Agreement, along with the Order Form and DPA (as each term is defined below) (collectively, this “Agreement”), is entered into as of the Effective Date (as defined below) between Nuclei (as defined below) and the entity identified as “Customer” on the Order Form (“Customer”).

By executing an Order Form, the individual executing such Order Form represents that they have the right, authority, and capacity to enter into this Agreement on behalf of Customer and to bind Customer to this Agreement.

Nuclei and Customer may be referred to herein individually as a “Party” and collectively as the “Parties”.

## 1. Definitions

- 1.1. “Affiliate” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with Nuclei or Customer. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50 %) of the voting interests of the subject entity.
- 1.2. “Applicable Data Protection Laws” means the privacy, data protection and data security laws and regulations of any jurisdiction applicable to Nuclei’s Processing of Personal Data under this Agreement, including, as and to the extent applicable, state privacy laws.
- 1.3. “Authorized Users” means individuals who are authorized by Customer to use the Services solely for the benefit of Customer and for whom a Subscription to the Services has been procured. Authorized Users may include Customer’s employees, consultants, and independent contractors.
- 1.4. “Confidential Information” means non-public information that is disclosed or made available by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) that is designated by the Disclosing Party as confidential or that the Receiving Party should reasonably know is confidential given the nature of the information or circumstances of disclosure. Without limiting the foregoing, Customer Data is the Confidential Information of Customer, and the non-public features of the Services and Documentation are the Confidential Information of Nuclei. Confidential Information does not include any information which (i) is or becomes generally known and available to the public through no fault of the Receiving Party; (ii) was already in the Receiving Party’s possession at the time of disclosure by the Disclosing Party free of any obligation of confidentiality owed to the Disclosing Party, as shown by the Receiving Party’s contemporaneous records; (iii) is lawfully obtained by the Receiving Party from a third-party free of any obligation of confidentiality owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party without use of, or reference to, the Disclosing Party’s Confidential Information.
- 1.5. “Customer Data” means all electronic data submitted or imported into the Services by or on behalf of Customer or its Authorized Users.
- 1.6. “Customer Chosen Third-Party Product” means a product, service, application, functionality, or content that is provided by a third-party or by Customer and that Customer or any of its Authorized Users chooses to interoperate or use in connection with the Services.
- 1.7. “DPA” means the data processing addendum that governs Nuclei’s Processing of Customer Data, available at <https://nuclei.ai/legal/>, which may be updated from time to time by Nuclei (provided such updates to not materially reduce Nuclei’s obligations therein).
- 1.8. “Documentation” means Nuclei’s user guides and other end user documentation, as may be updated by Nuclei from time to time, for the Services’ features or functionality and made available at <https://support.nuclei.ai/hc/en-us>.
- 1.9. “Effective Date” means the earliest of: (i) the effective date of the initial Order Form, or (ii) Customer’s initial access or use of any of the Services or Free Trial Services in any manner.
- 1.10. “Free Trial Services” means any product, service, or functionality that Nuclei makes available to Customer to try at Customer’s option, at no additional charge, and which is clearly designated as “beta,” “trial,” “pilot,” “evaluation,” or by a similar designation.

- 1.11. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents, or programs.
- 1.12. “**Nuclei**” means Nuclei, Inc., a Delaware corporation, with a place of business at 101 Crawfords Corner Road, Suite 4116, Holmdel, NJ 07733, USA. Nuclei is the original manufacturer of the Services delivered and subscribed to by Customer under this Agreement.
- 1.13. “**Nuclei Partner**” means a third-party business partner of Nuclei, authorized by Nuclei to sell Subscriptions to the Services or perform Professional Services related to Customer’s use of the Services.
- 1.14. “**Nuclei Required Third-Party Product**” means a product, service, application, or functionality that is provided by a third party and that is included in or with the Services by Nuclei and required for Customer to properly use the Services in accordance with the Documentation.
- 1.15. “**Order Form**” means an ordering document executed or otherwise accepted (e.g., through an electronic click-through acceptance mechanism) by Customer and Nuclei (or, if applicable, a Nuclei Partner), that references this Subscription Agreement and that specifies the products or services purchased by Customer or any of its Affiliates pursuant to such ordering document, including any supplements or addenda thereto. Order Forms do not include any Customer purchase order terms.
- 1.16. “**Personal Data**” means Customer Data that constitutes “personal data,” “personal information,” or “personally identifiable information” as defined in Applicable Data Protection Laws or information of a similar character regulated thereby, except that Personal Data does not include such information pertaining to Customer’s business contact information relating to its personnel or information received by Nuclei from other sources independent of Nuclei’s relationship with Customer.
- 1.17. “**Processing**” means any operation or set of operations which is performed by (or on behalf of Nuclei) on behalf of Customer under this Agreement, on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- 1.18. “**Professional Services**” means implementation and configuration services provided by Nuclei in connection with Customer’s use of the Services, as described more fully in the applicable Order Form or Statement of Work. Professional Services do not include the Services.
- 1.19. “**Services**” means the SaaS deployed products and services purchased and subscribed to by Customer under an Order Form and provided by Nuclei as described in the Documentation. Services include Nuclei Required Third-Party Products but excludes Professional Services, Free Trial Services, and Customer Chosen Third-Party Products.
- 1.20. “**Statement of Work**” means a document executed or otherwise accepted (e.g., through an electronic click-through acceptance mechanism) by Nuclei and Customer that references this Subscription Agreement and that describes certain Professional Services purchased by Customer pursuant to such document.
- 1.21. “**Subscription**” means a subscription to the Services for the applicable Subscription Period, as indicated in the applicable Order Form.
- 1.22. “**Subscription Period**” means the duration of a Subscription, as indicated in the applicable Order Form.

## 2. Services and Professional Services.

- 2.1. **Services Access.** Nuclei will make the Services available to Customer pursuant to this Agreement during the Subscription Period, and grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable (except as expressly permitted in Section 14.1) right during the Subscription Period to allow its Authorized Users to access and use the Services in accordance with the Documentation and any limitations set forth in the Order Form, solely for Customer's internal business purposes. Customer agrees that its purchase of the Services or the Professional Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Nuclei with respect to future functionality or features. Nuclei will comply with all laws applicable to its provision of the Services and Professional Services to its customers generally. Nuclei will comply with its then-current service level agreements, available at <https://support.nuclei.ai/hc/en-us/articles/360045762073-Nuclei-Services-Level-Agreements-SLAs>, which may be updated from time to time by Nuclei (provided such updates do not materially reduce Nuclei's obligations therein).
- 2.2. **Free Trials.** If Customer chooses to use any Free Trial Services, Nuclei will make such Free Trial Services available to Customer on a trial basis, free of charge, until the earlier of (i) the end of the Free Trial Services period for which Customer agreed to use such Free Trial Service, (ii) the start date of the Services if Customer has purchased a Subscription to the Services, or (iii) termination of the Free Trial Services by Nuclei in its sole discretion. A Free Trial Services period may be extended upon written agreement of Nuclei and Customer. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EACH FREE TRIAL SERVICE IS PROVIDED "AS IS" AND NUCLEI MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO INDEMNIFICATION OR SERVICE LEVEL OBLIGATIONS WITH RESPECT TO, ANY FREE TRIAL SERVICE. NUCLEI SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO ANY FREE TRIAL SERVICE, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE NUCLEI'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO SUCH FREE TRIAL SERVICE IS ONE-HUNDRED DOLLARS (\$100). CUSTOMER SHALL NOT USE THE FREE TRIAL SERVICES IN A MANNER THAT VIOLATES APPLICABLE LAWS AND, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF EACH FREE TRIAL SERVICE. ANY CUSTOMER DATA ENTERED INTO CUSTOMER'S FREE TRIAL SERVICES ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF THE FREE TRIAL.
- 2.3. **Customer Chosen Third-Party Products.** The Services may interoperate with certain Customer Chosen Third-Party Products. Such Customer Chosen Third-Party Products are not under Nuclei's control, and Nuclei makes no representations or warranties with respect to, is not responsible or liable for, and does not endorse any Customer Chosen Third-Party Products. Customer and its Authorized Users use all such Customer Chosen Third-Party Products at their own risk and will need to make their own independent judgment regarding any interaction or interoperation between them and the Services. Customer and its Authorized Users use all Customer Chosen Third-Party Products subject to agreements and policies (including privacy policies) between Customer and the providers of such Customer Chosen Third-Party Products. Customer acknowledges and agrees that it is Customer's sole responsibility to review and comply with such agreements and policies.
- 2.4. **Professional Services.** Customer and Nuclei may enter into Statements of Work or Order Forms that describe specific Professional Services to be performed by Nuclei. If applicable, while on Customer premises for Professional Services, Nuclei personnel shall comply with reasonable Customer rules and regulations regarding safety, and conduct made known to Nuclei, and will, at Customer's reasonable request, promptly remove from the project any Nuclei personnel not following such rules and regulations.

2.5. **Customer's Affiliates.** Customer's Affiliates may purchase and use the Services and Professional Services subject to the terms of this Agreement by executing Order Forms or Statements of Work hereunder that incorporate by reference the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Form(s) or Statement(s) of Work. Each such Customer Affiliate agrees to be bound by this Agreement.

2.6. **Artificial Intelligence Tools.**

Subject to this Agreement, Nuclei may make available to Customer certain functionality or tools within or in connection with the Services that use or leverage artificial intelligence related technology of Nuclei or its licensors, including large language models, algorithms, and machine learning technology (collectively, the "Nuclei AI Tools"). The Nuclei AI Tools may be used by Customer via the Services to generate suggested text, information, results, content, and other materials (collectively, "Outputs") in response to Customer's prompts or inputs (collectively, "Inputs"). As between the parties, Customer's Inputs and Outputs are considered "Customer Data" and Customer's Confidential Information for the purposes of this Agreement. Due to the nature of artificial intelligence related technology, Customer understands that Customer's Inputs and Outputs may not be unique, and the Nuclei AI Tools may generate the same or similar outputs for other users of the Nuclei AI Tools. Customer acknowledges that it may not have any proprietary rights in or to any Inputs or Outputs if the same or similar inputs or outputs have been submitted to or generated by the Nuclei AI Tools by or for other users of the Nuclei AI Tools or related artificial intelligence technology. Artificial intelligence is rapidly evolving and given its probabilistic nature, use of the Nuclei AI Tools may result in inaccurate or incomplete Outputs. Customer is solely responsible for evaluating the accuracy, completeness, and suitability of its Inputs and Outputs for Customer's use cases, and subjecting them to appropriate quality control procedures, including human review and verification.

Nuclei does not make any representations, warranties, or covenants with respect to any Inputs or Outputs except that Nuclei agrees not to transfer to any third party any of Customer's specific Inputs or Outputs without Customer's prior consent, or as necessary to provide the Services.

2.7. **Open Source Software.** Certain items of software may be provided to Customer with the Services and are subject to "open source" or "free software" licenses ("Open Source Software"). Some of the Open Source Software is provided by third parties. The Open Source Software is not subject to the terms and conditions of Section 2.1 (Services Access) or Section 11 (Indemnification). Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Nuclei makes such Open Source Software, and Nuclei's modifications to that Open Source Software, available by written request.

### 3. **Customer's Obligations.**

3.1. **Customer Obligations and Restrictions.** Customer is responsible for all activities conducted under its and its Authorized Users' Services logins and accounts. Customer shall use the Services in compliance with this Agreement, the Documentation, and all applicable laws and shall not, and shall not permit any person or entity to: (i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Services, or any part thereof, or make it available to anyone other than its Authorized Users; (ii) transmit into or store on the Services any personal health data, credit card data, personal financial data or other similar sensitive data which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards; (iii) transmit into or store on the Services any data or materials that are unlawful or that infringe, misappropriate, or

otherwise violate any person's rights, including intellectual property, privacy, or publicity rights; (iv) transmit into or store on the Services any Malicious Code; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Services or the data contained therein; (vi) modify, copy, or create derivative works based on the Services, or any portion thereof; (vii) access the Services for the purpose of building a competitive product or service or copying its features or user interface; (viii) delete, alter, add to, or fail to reproduce in and on the Services the Nuclei name or any copyright, trademark, or other proprietary rights notices appearing in or on the Services; (ix) decompile, disassemble, reverse engineer, or attempt to reconstruct or discover any source code, structure, ideas, algorithms, or other hidden or non-public elements of the Services; (x) perform any deceitful, misleading, or fraudulent activity, including impersonating any person or entity, claiming a false affiliation, or accessing any account without permission; or (xi) use the Services for any unlawful purpose, promoting or engaging in any harmful activities, or for any purpose not expressly permitted hereunder.

- 3.2. **Customer Security Obligations.** Any use of the Services by Customer or any of its Authorized Users in breach of this Agreement that in Nuclei's reasonable judgment threatens the security, integrity, or availability of the Services may result in Nuclei's immediate suspension of Customer's and/or any Authorized User's access to the Services; however, Nuclei will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

#### 4. **Nuclei Partner Orders.**

Notwithstanding anything to the contrary in this Agreement, if Customer acquires Subscriptions to the Services or purchases any Professional Services through a Nuclei Partner, then: (i) Customer shall pay the Nuclei Partner all applicable fees for such Subscriptions and Professional Services in accordance with the Order Form and separate agreement entered into between Customer and the Nuclei Partner (collectively, the "**Partner Agreement**"); (ii) the Partner Agreement is between Customer and the Nuclei Partner and is not binding on Nuclei, and any disputes related to the Partner Agreement shall be handled directly between Customer and the Nuclei Partner; (iii) this Agreement specifies the terms and conditions under which such Services and Professional Services will be provided by Nuclei and accessed and used by Customer, except that Section 8 (Fees, Expenses, and Taxes), Section 13.1 (Term), and Section 13.2 (Termination) will not apply to such Subscriptions, Services, or Professional Services; (iv) Nuclei may terminate this Agreement immediately upon the termination of the Partner Agreement for any reason or if Customer breaches Section 3 (Customer's Obligations), Section 6 (Confidentiality), or Section 7 (Ownership, Feedback, and Usage Data) of this Agreement; and (v) any claims for damages, losses, refunds, or any other type of liability shall be submitted by Customer only to the Nuclei Partner and will be governed exclusively by the Partner Agreement. Subject to the preceding sentence, in the event of any conflict between this Agreement and a Partner Agreement, this Agreement shall govern as between Nuclei and Customer.

#### 5. **Security and Support.**

- 5.1. **Security.** Nuclei shall maintain commercially reasonable technical and organizational safeguards designed to protect the security and integrity of the Services and the Customer Data as described in the applicable Documentation. Except with respect to Free Trial Services, to the extent that Nuclei Processes any Personal Data on Customer's behalf in the provision of the Services, the DPA is hereby incorporated by reference, shall apply, and the Parties agree to comply with such terms.
- 5.2. **Support.** During the Subscription Period, Nuclei shall provide Customer with the support services in accordance with Nuclei's then-current support policy, available at <https://support.nuclei.ai/hc/en-us/articles/360045763393-Nuclei-Support-Resources>, which may be updated from time to time by Nuclei (provided such updates do not materially reduce Nuclei's obligations therein).

## 6. Confidentiality.

The Receiving Party agrees to protect the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own Confidential Information of like kind, but in no event using less than a reasonable standard of care. The Receiving Party shall not: (i) use any Confidential Information of the other Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission, and (ii) disclose or make the Disclosing Party's Confidential Information available to any party, except to its employees, service providers, contractors, and agents that have signed an agreement containing disclosure and non-use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of this Agreement. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure. Due to the unique nature of the Parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a Party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching Party. Therefore, upon any such breach or threat thereof, the Party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it.

## 7. Ownership, Feedback, and Usage Data.

- 7.1. **Customer Data.** As between Nuclei and Customer, Customer owns its Customer Data. Customer grants to Nuclei and its applicable service providers and contractors a worldwide, non-exclusive license to host, use, copy, modify, transmit, and display Customer Data (i) as reasonably necessary for Nuclei to provide the Services, Professional Services, and support in accordance with this Agreement, and (ii) to improve and further develop the Services and Nuclei's technology, including to train Nuclei's algorithmic models, provided that in doing so Nuclei will comply with all applicable Data Protection Laws and will not disclose any Customer Data to any third-party in a manner that could identify Customer or any Authorized User. Customer is solely responsible for creating backup copies of any Customer Data at Customer's sole cost and expense, and Customer acknowledges that Nuclei has the right to delete all Customer Data upon termination of this Agreement. Subject to the limited licenses granted herein, Nuclei acquires no right, title, or interest in any Customer Data. Customer shall be responsible for the accuracy, quality, and legality of Customer Data, including the means by which Customer acquired Customer Data. Customer is solely responsible for obtaining all consents and rights required from third parties to allow Nuclei to access, use, store, and Process the Customer Data as contemplated herein and to exercise the license rights to Customer Data as set forth in this Section 7.1. Although Nuclei has no obligation to monitor Customer's use of the Services, Nuclei reserves the right in its sole discretion to refuse or remove any Customer Data from the Services if Nuclei reasonably believes it violates this Agreement, applicable laws, or is otherwise objectionable. If Nuclei believes that criminal activity has occurred, Nuclei reserves the right to, except to the extent prohibited by applicable law, disclose any Customer Data to comply with applicable laws, legal processes, or governmental requests.
- 7.2. **Nuclei Ownership.** Except for the rights expressly granted under this Agreement, Nuclei and its licensors retain all right, title, and interest in and to the Services, Documentation, Professional Services, and the work product and deliverables created by Nuclei in connection with its provision of the Services or Professional Services, including all related intellectual property rights inherent therein. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

- 7.3. **Feedback.** Nuclei shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or its Users relating to the features, functionality, or operation of the Services or the Professional Services (“**Feedback**”). Nuclei shall have no obligation to use Feedback, and Customer shall have no obligation to provide Feedback.
- 7.4. **Usage Data.** Nuclei owns the usage data derived from the operation of the Services, including data regarding applications utilized in connection with the Services, configurations, log data, and the performance results for the Services (“**Usage Data**”). Nothing herein shall be construed as prohibiting Nuclei from utilizing the Usage Data for purposes of operating Nuclei’s business; provided that Nuclei will not disclose any Usage Data to any third-party in a manner that could identify Customer or any Authorized User.

### **8. Fees, Expenses, and Taxes.**

- 8.1. **Fees.** Customer agrees to pay Nuclei all fees set forth in the applicable Order Form (“**Fees**”) in accordance with this Agreement and the Order Form. If not otherwise specified on an Order Form, all such Fees (except Fees subject to a good faith dispute) will be due within thirty (30) days of date of invoice. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to Nuclei hereunder are non-cancelable and non-refundable. If Customer fails to pay any amounts due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) Nuclei reserves the right to suspend the Services or Professional Services upon thirty (30) days written notice, until such amounts are paid in full, and (ii) Nuclei will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5 %) per month or the maximum rate permitted by applicable law until Customer pays all amounts due.
- 8.2. **Expenses.** Unless otherwise specified in the applicable Statement of Work, upon invoice from Nuclei, Customer will reimburse Nuclei for all pre-approved, reasonable expenses incurred by Nuclei while performing the Professional Services, including without limitation, transportation services, lodging, and meal and out-of-pocket expenses related to the provision of the Professional Services. Nuclei will include reasonably detailed documentation of all such expenses with each related invoice.
- 8.3. **Taxes.** Fees do not include and may not be reduced to account for any taxes, including any local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use, or withholding taxes (collectively, “**Taxes**”). Customer is responsible for paying all Taxes associated with its purchases hereunder (excluding Taxes based on Nuclei’s net income or property) unless Customer provides Nuclei with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by applicable law to withhold any tax with respect to any payment owed to Nuclei, Customer will (i) pay Nuclei the full amount owed to Nuclei under the relevant Order Form without reduction for any such withholding tax; (ii) pay the appropriate amount to the applicable taxing authority, as required by applicable law, and (iii) furnish to Nuclei certified copies of tax receipts and any other documentation reasonably requested by Nuclei as proof of Customer’s payment of the withholding tax.

## 9. Warranties and Disclaimer.

### 9.1. Warranties.

- a) **Services.** Each Party warrants that it has the authority to enter into this Agreement. Nuclei warrants that during the Subscription Period: (i) the Services shall perform materially in accordance with the applicable Documentation; (ii) Nuclei will use commercially reasonable efforts to employ generally accepted industry standards to test the Services to detect and remediate Malicious Code designed to negatively impact the operation or performance of the Services, and (iii) the overall functionality of the Services will not be materially decreased as described in the applicable Documentation. Upon Nuclei's receipt of written notice of any breach of the foregoing warranties, Nuclei will use commercially reasonable efforts to correct the non-conforming Services at no additional charge to Customer, and in the event Nuclei fails to successfully correct the Services within a reasonable time after receipt of written notice from Customer detailing the breach, Customer shall be entitled to terminate the applicable Services in accordance with Section 13.2 and receive a pro rata refund of any prepaid, unused Fees for the non-conforming Services. The remedies set forth in this subsection will be Customer's sole remedy and Nuclei's entire liability for breach of these warranties. The warranties set forth in this subsection shall apply only if the applicable Services have been utilized in accordance with the Documentation, this Agreement, and applicable law.
- b) **Professional Services.** Nuclei warrants that the Professional Services will be performed in a good and workmanlike manner consistent with applicable generally accepted industry standards. As Customer's sole remedy and Nuclei's entire liability for any breach of the foregoing warranty set forth in this Section 9.1(b), Nuclei will, at its sole option and expense, promptly re-perform the non-conforming Professional Services or refund to Customer the Fees paid for the non-conforming Professional Services; provided that Customer notifies Nuclei no later than thirty (30) days after delivery of such Professional Services.

### 9.2. Disclaimer.

9.2.1. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH UNDER SECTION 9.1(a) AND 9.1(b), NUCLEI AND ITS SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, STATUTORY, OR IMPLIED, RELATING TO THE SERVICES, PROFESSIONAL SERVICES, OR OTHER SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LOSS OF DATA, ACCURACY OF RESULTS, OR ARISING FROM COURSE OF DEALING, USAGE, TRADE, OR RELIANCE. NUCLEI MAKES NO WARRANTY REGARDING ANY FREE TRIAL SERVICES OR ANY CUSTOMER CHOSEN THIRD-PARTY PRODUCT WITH WHICH THE SERVICES MAY INTEROPERATE.

9.2.2. THE NUCLEI AI TOOLS ARE INTENDED AS OUTPUT GENERATION TOOLS ONLY AND DO NOT CONSTITUTE ANY WARRANTY OR GUARANTY THAT THE OUTPUT WILL PROVIDE ACCURATE, TAILORED OR INFORMATIVE RESULTS OR BE FIT FOR THE PARTICULAR PURPOSE OR USE CASE. THE LAWS AND REGULATIONS GOVERNING USE OF GENERATIVE AI ARE RAPIDLY EVOLVING, AND NUCLEI DOES NOT GUARANTEE THAT CUSTOMER'S USE OF THE SERVICES, INCLUDING THE NUCLEI AI TOOLS OR OUTPUT, WILL COMPLY WITH APPLICABLE LAWS AND REGULATIONS OR THAT FUTURE LAWS AND REGULATIONS WILL NOT IMPACT CUSTOMER'S USE THEREOF. NUCLEI DOES NOT REPRESENT OR WARRANT THAT THE CUSTOMER IS THE LEGAL OWNER OF THE OUTPUT, OR THAT THE INPUT OR OUTPUT ARE PROTECTABLE BY ANY INTELLECTUAL PROPERTY RIGHTS, OR THAT THE OUTPUT DOES NOT INCORPORATE, INFRINGE OR MISAPPROPRIATE THE INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY. CUSTOMER IS SOLELY RESPONSIBLE FOR (i) ENSURING THAT ITS USE OF THE SERVICES, INCLUDING THE NUCLEI TOOLS AND OUTPUT, COMPLY WITH ALL APPLICABLE LAWS; AND (ii) CUSTOMER'S USE OF THE SERVICES, INCLUDING THE NUCLEI AI TOOLS AND ANY OUTPUT RESULTING THEREFROM. CUSTOMER SHOULD EVALUATE THE FITNESS OF ANY OUTPUT AS APPROPRIATE FOR CUSTOMER'S SPECIFIC USE CASE.



## 10. Limitation of Liability.

- 10.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY (OR NUCLEI'S LICENSORS OR SERVICE PROVIDERS) BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY FOR (i) ERROR OR INTERRUPTION OF USE, OR LOSS, INACCURACY, OR CORRUPTION OF DATA, (ii) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, RIGHTS, OR TECHNOLOGY, (iii) ANY LOST PROFITS OR REVENUES, OR (iv) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 10.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12)-MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES" SECTION ABOVE OR ITS LIABILITY FOR ITS VIOLATION OF NUCLEI'S INTELLECTUAL PROPERTY RIGHTS, OR EITHER PARTY'S LIABILITY FOR ITS INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE. THE EXISTENCE OF MULTIPLE CLAIMS SHALL NOT ENLARGE SUCH LIMITATION.

## 11. Indemnification.

- 11.1. **Nuclei Indemnification Obligation.** Subject to Section 11.3, Nuclei will defend Customer from any and all claims, demands, suits, or proceedings ("**Claims**") brought against Customer by a third party alleging that the Services, as provided by Nuclei to Customer under this Agreement, infringes any patent, copyright, or trademark or misappropriates any trade secret of any third party (each, an "**Infringement Claim**"). Nuclei will indemnify Customer for all damages, costs, and reasonable attorneys' fees finally awarded by a court of competent jurisdiction or paid to a third-party in accordance with a settlement agreement signed by Nuclei, in connection with an Infringement Claim. In the event of any such Infringement Claim, Nuclei may, at its option: (i) obtain the right to permit Customer to continue using the Services, (ii) modify or replace the relevant portion(s) of the Services with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate this Agreement as to the infringing Services and provide a pro rata refund of any prepaid, unused Fees for such infringing Services. Notwithstanding the foregoing, Nuclei will have no liability for any Infringement Claim of any kind to the extent that it results from: (i) modifications to the Services made by a party other than Nuclei, (ii) the combination of the Services with other products, processes, or technologies (where the infringement would have been avoided but for such combination), or (iii) Customer's use of the Services other than in accordance with the Documentation or this Agreement (collectively, "**Exclusions**"). The indemnification obligations set forth in this Section 11.1 are Nuclei's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind by the Services.
- 11.2. **Customer Indemnification Obligation.** Subject to Section 11.3, Customer will defend Nuclei from any and all Claims brought against Nuclei by a third-party alleging a violation of a third-party's rights arising from Customer's provision or use, or Nuclei's use, of any Customer Data and for the Exclusions set forth in 11.1. Customer will indemnify Nuclei for all damages, costs, and reasonable attorneys' fees finally awarded by a court of competent jurisdiction or paid to a third-party in accordance with a settlement agreement signed by Customer, in connection with such Claims.
- 11.3. **Indemnity Requirements.** The Party seeking indemnity under this Section 11 ("**Indemnitee**") must give the other Party ("**Indemnitor**") the following: (i) prompt written notice of any Claim for which the Indemnitee intends to seek indemnity, (ii) all cooperation and assistance reasonably requested by the Indemnitor in the defense of the Claim, at the Indemnitor's sole expense, and (iii) sole

control over the defense and settlement of the Claim, provided that the Indemnitee may participate in the defense of the Claim at its sole expense.

### 12. Publicity.

Nuclei may use Customer's name to identify Customer as a Nuclei customer of the Services, including on Nuclei's public website and any marketing materials. Nuclei agrees that any such use shall be subject to Nuclei complying with any written guidelines that Customer may deliver to Nuclei regarding the use of its name and shall not be deemed Customer's endorsement of the Services.

### 13. Term, Termination, and Effect of Termination.

- 13.1. **Term.** The term of this Agreement commences on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, continues until the last Subscription Period has expired ("**Term**"). Except as otherwise specified in an Order Form, Subscriptions to the Services will automatically renew for additional terms equal to the expiring Subscription Period, unless and until either Party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Subscription Period.
- 13.2. **Termination.** Either Party may terminate this Agreement by written notice to the other Party in the event that (i) such other Party materially breaches this Agreement and does not cure such breach within thirty (30) days of such notice, or (ii) immediately in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer pursuant to this Section 13.2, Nuclei will refund Customer a pro-rata portion of any prepaid Fees that cover the remainder of the applicable Subscription Period after the effective date of termination and a pro-rata portion of any prepaid Professional Services Fees that cover Professional Services that have not been delivered as of the effective date of termination. For clarity, a termination of any Statement of Work or Order Form shall not be considered a termination of this Agreement or any other Statement of Work or Order Form.
- 13.3. **Effect of Termination.** Upon termination of this Agreement for any reason, all rights granted to Customer and all Subscriptions and all Order Forms will immediately terminate and Customer will cease using the Services and Nuclei's Confidential Information. Termination for any reason other than termination for cause by Customer pursuant to Section 13.2(i) shall not relieve Customer of the obligation to pay all future amounts due under all Order Forms. The sections titled "Definitions," "Free Trials," "Customer Chosen Third-Party Products," "Artificial Intelligence Tools," "Customer's Obligations," "Confidentiality," "Ownership, Feedback, and Usage Data," "Fees, Expenses, and Taxes," "Disclaimer," "Limitation of Liability," "Indemnification," "Term, Termination, and Effect of Termination," and "General" shall survive any termination or expiration of this Agreement.

### 14. General

- 14.1. **Assignment.** Neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer or Nuclei without the other Party's prior written consent which shall not be unreasonably withheld or delayed, and any such attempted assignment or transfer shall be void and without effect. Notwithstanding the foregoing, either Party may assign or transfer this Agreement in its entirety (including all Order Forms and Statements of Work), upon notice and without the consent of the other Party, to its successor in connection with a merger or sale of all or substantially all of its assets, provided that all Fees owed and due have been paid and the assignee agrees to be bound by all the terms of this Agreement.
- 14.2. **Controlling Law, Attorneys' Fees and Severability.** This Agreement and any disputes arising out of or related hereto shall be governed by the laws of the State of Delaware, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. Any

disputes under this Agreement must be brought in the courts of the State of Delaware, or in the federal courts of the United States located in Delaware. Each Party hereby consents to the personal jurisdiction and exclusive venue of these courts. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

- 14.3. **Notices.** All legal notices hereunder shall be in writing to the addresses provided on the Order Form and given upon (i) personal delivery, in which case notice shall be deemed given on the day of such hand delivery, (ii) by a recognized overnight courier, in which case notice shall be deemed given one (1) business day after deposit with the courier for U.S. deliveries or three (3) business days for international deliveries, or (iii) email, in which notice shall be deemed given on the day when receipt of the email is acknowledged.
- 14.4. **Force Majeure.** If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a Party (a "Force Majeure Event"), the Party so affected shall be excused from such performance and liability to the extent of such prevention or restriction.
- 14.5. **Independent Contractors.** The Parties shall be independent contractors under this Agreement, and nothing herein shall constitute either Party as the employer, employee, agent, or representative of the other Party, or both Parties as joint venturers or partners for any purpose. There are no third-party beneficiaries under this Agreement.
- 14.6. **Export Compliance.** Each Party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Customer will not access or use the Services in any manner that would cause any Party to violate any U.S. or international embargo, export control law, or prohibition.
- 14.7. **Government End User.** If Customer is a U.S. government entity or if this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), Customer acknowledges that elements of the Services constitute software and documentation and are provided as "Commercial Items" as defined in 48 C.F.R. 2.101 and are being licensed to U.S. government Customer as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101, 12.211 and 12.212. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement (DFARS) and its successors. This U.S. Government End User Section 14.7 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.
- 14.8. **Entire Agreement.** This Agreement, including all Order Forms and Statements of Work, constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the Parties hereto, including any non-disclosure agreement(s), and related to the subject matter hereof are expressly canceled. The Parties agree that any term or condition stated in Customer's purchase order or in any other of Customer's order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) the body of this Agreement, and (3) the Documentation. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties hereto. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.