



## SMB SUBSCRIPTION AND SERVICES AGREEMENT

This SMB Subscription and Services Agreement ("**Agreement**") and any executed Orders Forms and/or SOWs between the parties, are incorporated herein and shall govern the provision of the Services by Nuvolo Technologies Corporation ("**Nuvolo**") to the customer set forth in the applicable Order Form or SOW ("**Customer**"). Customer and its Affiliates may place orders under this Agreement by submitting separate Order Forms and SOWs. This Agreement shall commence on the Effective Date of Customer's first executed Order Form or SOW ("**Effective Date**") and will continue until otherwise terminated in accordance with Section 12 below.

### 1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Application Data**" means any electronic data uploaded by Customer's agents, employees and contractors that is processed through the Subscription Service.

"**Customer Data**" means any Application Data and any other data, including Regulated Data, that Customer provides to Nuvolo in accordance with this Agreement to enable Nuvolo to meet its obligations hereunder.

"**Deliverable**" is a deliverable that is explicitly identified as such in the applicable SOW created by Nuvolo for Customer in the performance of the Professional Services.

"**Documentation**" means the product description on the Order Form and Nuvolo product release notes relating to the features and functionality of the Subscription Service, as updated from time to time by Nuvolo.

"**Order Form**" means a written ordering document specifying the Subscription Service to be provided hereunder that is entered into between Customer and Nuvolo.

"**Professional Services**" means fee-based configuration, implementation, training or consulting services that Nuvolo performs in accordance with an applicable Order Form or SOW, but excluding Support Services.

"**Regulated Data**" means individual personal or other data that is regulated by various governmental acts, legislations and directives relating to privacy and security requirements for its protection and processing.

"**Services**" means the Subscription Service and Professional Services that Customer may purchase under an Order or SOW.

"**Statement of Work**" or "**SOW**" means a statement of work for Professional Services, agreed to by the Parties in writing.

"**Subscription Service**" means the software applications and tools made available by Nuvolo via applicable logins, and associated Support Services, all as ordered and paid for by Customer under an Order Form.

"**Subscription Term**" means the term of authorized use of the Subscription Service as set forth in each Order Form including any renewals thereof.

"**Support Services**" means those support services ordered and provided as part of the Subscription Service hereunder at no additional charge in accordance with the [Nuvolo Customer Support Policy](#) and [Upgrade Policy](#), incorporated herein by reference.

"**Third Party Applications**" means any separate services or applications (and other consulting services related thereto), procured by Customer from a party other than Nuvolo that can be used in connection with the Subscription Service.

"**Trademarks**" means a party's logo(s), service marks, trademarks and certification marks.

"**Trial Services**" means any Nuvolo product, service or functionality that may be made available by Nuvolo to Customer to try at Customer's option, at no additional charge, and which is designated as "beta," "test," "trial," "non-GA," "unpaid pilot," "developer preview," "non-production," "evaluation," or by a similar designation.

"**User**" means an individual designated and granted access to the Subscription Service by or on behalf of Customer.

### 2. NUVOLO RESPONSIBILITIES

**2.1 Provision of Subscription Service.** Subject to the terms of this Agreement, Nuvolo authorizes Customer to access and use the Subscription Service during the Subscription Term as set forth in an applicable Order Form for its internal business purposes in accordance with the Documentation. Customer may permit contractors and Affiliates to serve as Users provided that any use of the Subscription Service by each such contractor or Affiliate is solely for the benefit of Customer. Nuvolo provides the Subscription Service only in the English language, unless otherwise agreed in writing. So long as Nuvolo does not materially degrade the functionality of the Subscription Service as described in the Documentation, during the applicable Subscription Term (i) Nuvolo may modify the systems and environment used to provide the Subscription Service to reflect changes in technology, industry practices and patterns of use, and (ii) update Documentation accordingly. Subsequent updates, upgrades, enhancements to the Subscription Service made generally available to all subscribing customers will be made available to Customer at no additional charge, but the purchase of Subscription Service is not contingent on the delivery of any future functionality or features. New features, functionality or enhancements to the Subscription Service may be marketed separately by Nuvolo and may require an additional subscription and the payment of additional fees in the event Customer wishes to add such features, functionality or enhancements. Nuvolo will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require such additional subscription.

**2.2 Trial Services.** If Customer registers or accepts an invitation for Trial Services, including through Nuvolo's website, or executes an Order Form for the same, Nuvolo will make such Trial Services available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Trial Services, or (b) the end date specified in the applicable Order Form. Trial Services are provided for evaluation purposes and not for production use. Customer shall have sole responsibility and Nuvolo assumes no liability for any Customer Data that Customer may choose to upload on the Trial Services. Trial Services may contain bugs or errors, and may be subject to additional terms. TRIAL SERVICES ARE NOT CONSIDERED "SUBSCRIPTION SERVICE OR PROFESSIONAL SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. Nuvolo may, in its sole discretion, discontinue Trial Services at any time.

### 3. SECURITY AND DATA PRIVACY

**3.1 Security and Internal Controls.** Nuvolo will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data in its possession, using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Nuvolo personnel except (a) to provide Subscription Services; (b) to provide Professional Services; (c) as compelled by law in accordance with Section 8, or (d) as otherwise required for meeting its obligations hereunder.

**3.2 Data Privacy.** In providing the Subscription Service, Nuvolo will comply with the [Nuvolo Privacy Policy](#) incorporated herein by reference. The Nuvolo Privacy Policy is subject to change at Nuvolo's discretion; however, such policy changes will not result in a material reduction in the level of protection provided for Customer Data during the Subscription Term. Customer acknowledges that any Regulated Data disclosed to Nuvolo as part of Customer Data is incidental to the Subscription Service and that Nuvolo does not review or analyze the content of Customer Data in the ordinary

course of operating the Subscription Service. Customer acknowledges that Customer Data shall not include Regulated Data outside of the work-related data of Customer personnel who use the Subscription Service. For any such incidental access to Regulated Data, NuvoLO shall comply with applicable requirements and process any such Regulated Data consistent with this Agreement and as necessary to provide the Subscription Service, which shall be considered Customer's instructions related thereto. Customer agrees that it shall be solely responsible for complying with any obligations under any government law or regulation that requires any review or analysis of such content.

**3.3 Compliance with Law.** NuvoLO will comply with all laws applicable to the provision of the Subscription Service, including applicable security breach notification laws, but not including any laws applicable to the Customer's industry that are not generally applicable to information technology services providers.

**3.4 Access to Systems.** NuvoLO's obligations extend only to those systems, networks, network devices, facilities and components over which NuvoLO exercises sole control. For clarity, NuvoLO shall not be liable for: (i) the actions and omissions of Customer personnel with access to the Subscription Services; (ii) Customer Data including any Regulated Data in Customer's virtual private network (VPN) or third-party network; or (iii) any Customer Data processed by Customer in violation of this Agreement. For the avoidance of doubt, NuvoLO does not have access to Customer's production instance of the Subscription Service without Customer personnel providing such access.

#### **4. USE OF SUBSCRIPTION SERVICE**

**4.1 Subscription Limits.** The Subscription Service is subject to usage and other limits, including quantities and/or functionality restrictions referenced in the applicable Order Forms and Documentation. Unless otherwise agreed in writing, (a) Customer usage may not exceed the applicable use and access rights ordered and paid for, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned by Customer to a new individual replacing one who no longer requires ongoing use of the Subscription Service. Customer will reasonably cooperate with any NuvoLO audit of Customer's use of the Subscription Service, which may require Customer to run reports for NuvoLO's review. If NuvoLO determines that Customer has exceeded its permitted use of the Subscription Service then NuvoLO will notify Customer and within thirty (30) days thereafter. Customer, at its option, shall either: (i) disable any unpermitted use or (ii) purchase additional subscriptions commensurate with Customer's actual use.

**4.2 Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Subscription Service, and notify NuvoLO promptly of any unauthorized access or use; (d) use the Subscription Service only in accordance with the Documentation; (e) take commercially reasonable steps to ensure the security and compliance of the controls used by Customer in accessing the Subscription Service; and (f) comply with all legal and regulatory requirements in its use of any Subscription Service and the means by which Customer acquired Customer Data.

**4.3 Usage Restrictions.** Customer will not and will not permit any third party to do the following with respect to the Subscription Service: (i) use it or any external programs in a manner that intentionally circumvents usage restrictions; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any of it available for access by third parties except as expressly provided herein; (iii) access it for the purpose of developing or operating products or services intended to compete with it; (iv) disassemble, reverse engineer or decompile it; (v) copy, create derivative works or otherwise modify it except as permitted in this Agreement; (vi) remove or modify a copyright or other proprietary rights notice in it; (vii) use it to reproduce, distribute, display, transmit or use illegal material or material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (viii) use it to create, use, send, store or run code,

files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation; or (ix) access or disable any NuvoLO or third party data, software or network.

**4.4 Third Party Applications.** In support of Customer's authorized internal business use of the Subscription Service, NuvoLO may provide URL links or interconnectivity within the Subscription Service to facilitate Customer's use of Third-Party Applications. Notwithstanding the foregoing, any use or procurement of Third-Party Applications are solely at Customer's discretion and between Customer and the applicable third party. NuvoLO will have no liability for such Third-Party Applications.

#### **5. PROFESSIONAL SERVICES**

**5.1 Standard Professional Services.** A description of NuvoLO's standard Professional Services offerings, including certain onboarding and training, may be found in the Documentation. Standard Professional Services may be identified in an Order Form without the need for issuance of an SOW.

**5.2 Other Professional Services.** For any non-standard Professional Services, NuvoLO will provide Customer with Professional Services as set forth in the applicable SOW. Each SOW will include, at a minimum (i) a description of the Professional Services and any Deliverable to be delivered to Customer; (ii) the scope of Professional Services; (iii) the schedule for the provision of such Professional Services; and (iv) the applicable fees for such Professional Services, if not specified elsewhere.

**5.3 Change Orders.** Changes to contracted Professional Services will require, and shall become effective only when, fully documented in a written change order (each a "Change Order") signed by duly authorized representatives of the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. Change Orders shall be deemed part of, and subject to, this Agreement.

**5.4 Designated Contact and Cooperation.** Customer will designate a contact for NuvoLO, will cooperate with NuvoLO, will provide NuvoLO with accurate and complete information, will provide NuvoLO with such assistance and access as NuvoLO may reasonably request, and will fulfill its responsibilities as set forth in this Agreement and the applicable SOW. NuvoLO Affiliates and contractors may perform certain aspects of the Professional Services hereunder provided that NuvoLO remains fully liable for same and responsible for ensuring that any of NuvoLO's obligations under this Agreement performed by its Affiliates and contractors are carried out in accordance with this Agreement. If applicable, while on Customer premises, NuvoLO personnel shall comply with reasonable Customer rules and regulations regarding safety, conduct, and security made known to NuvoLO.

#### **6. FEES AND PAYMENT**

**6.1 Fees.** Customer will pay all fees as specified in an Order Form or SOW, as applicable. Except as otherwise specified herein or in an Order Form or SOW, (i) fees are based on Subscription Service usage rights purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, (iii) quantities purchased cannot be decreased during the relevant Subscription Term and (iv) partial payments on invoices will be considered a breach of this Section 6.

**6.2 Invoicing and Payment.** Subscription Service fees will be invoiced annually in advance in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from invoice date. NuvoLO requires payment to be submitted via Automated Clearing House (ACH) or other electronic means. Customer shall provide NuvoLO with their ACH or electronic invoicing information no later than the Effective Date of this Agreement. Customer is responsible for providing complete and accurate billing and contact information to NuvoLO and notifying NuvoLO of any changes to such information. Unless otherwise agreed in the applicable SOW, Professional Services fees will be invoiced on a time and materials basis, weekly in arrears.

**6.3 Purchase Orders.** If Customer issues a purchase order, then it shall be for at least the full amount of the Order Form. Any additional or conflicting

terms appearing in a purchase order or new supplier or vendor setup form shall not amend the Order Form or this Agreement. Upon request, Nuvolo shall reference the purchase order number on its invoices (solely for administrative convenience) so long as Customer provides the purchase order at least ten (10) business days prior to the date of the invoice.

**6.4 Overdue Charges.** If any invoiced amount is not received by Nuvolo by the due date, then without limiting Nuvolo's rights or remedies, those charges may accrue late interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

**6.5 Suspension of Subscription Service.** If any amount owed by Customer is thirty (30) days or more overdue, Nuvolo may, without limiting its other rights and remedies, suspend the Subscription Service until such amounts are paid in full, provided Nuvolo has given Customer at least ten (10) days' prior notice that its account is overdue.

**6.6 Payment Disputes.** Nuvolo will not exercise its rights under Section 6.5 with respect to non-payment by Customer if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within thirty (30) days, Nuvolo may exercise any right herein and each party shall have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full when due.

**6.7 Taxes.** Nuvolo's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Nuvolo has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Nuvolo will invoice Customer and Customer will pay that amount unless Customer provides Nuvolo with a valid tax exemption certificate authorized by the appropriate taxing authority which must be provided before the Effective Date. Nuvolo will calculate applicable Taxes based on the address where Customer primarily uses the Subscription Service as specified in the relevant Order Form. Customer will be responsible for self-assessing and paying any additional Taxes arising from its use of Subscription Service at a different address. Customer will promptly notify Nuvolo of any changes to a Customer address specified in an Order Form. For clarity, Nuvolo is solely responsible for taxes assessable against it based on its income, property and employees.

**6.8 Affiliate Ordering.** Customer Affiliates may purchase the Subscription Service from Nuvolo by executing a separate Order Form which is governed by the terms of this Agreement. This will establish a new and separate agreement between the Customer Affiliate and Nuvolo.

**6.9 Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Nuvolo regarding future functionality or features.

## **7. INTELLECTUAL PROPERTY AND LICENSES**

**7.1 Nuvolo Ownership.** As between Nuvolo and Customer, all rights, title, and interest in and to all intellectual property rights in the Subscription Service are owned exclusively by Nuvolo notwithstanding any other provision in this Agreement or any other agreement as signed between the parties. Except as expressly provided in this Agreement, Nuvolo reserves all rights in the Subscription Service and does not grant Customer any rights, express or implied or by estoppel.

**7.2 Customer Ownership.** As between Customer and Nuvolo, Customer shall retain all rights, title, and interest in and to its intellectual property rights in Customer Data.

**7.3 License by Customer for Customer Data.** Solely to the extent required to provide the Subscription Service in accordance with this Agreement, Customer grants Nuvolo a worldwide, limited-term license to copy, transmit and display Customer Data. Subject to the limited license granted herein,

Nuvolo acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data.

**7.4 License by Customer to Use Feedback.** Customer grants to Nuvolo a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Subscription Service any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Subscription Service. For the avoidance of doubt, Nuvolo's exposure to Customer Data, without more, does not constitute feedback.

**7.5 Deliverables.** Excluding any property that constitutes Outside Property, any Deliverables shall be the sole property of Customer upon Customer's payment in full of all associated Professional Services fees. Nuvolo shall execute and, at Customer's written request, require its personnel to execute any document that may be necessary or desirable to establish or perfect Customer's rights to the ownership of such Deliverables. For purposes of this Agreement, "Outside Property" means any and all technology and information, methodologies, data, designs, ideas, concepts, know-how, techniques, user-interfaces, templates, documentation, software, hardware, modules, development tools and other tangible or intangible technical material or information that Nuvolo possesses or owns prior to the commencement of Professional Services or which it develops independent of any activities governed by this Agreement, and any derivatives, modifications or enhancements made to any such property. Outside Property shall also include any enhancements, modifications or derivatives made by Nuvolo to the Outside Property while performing Professional Services hereunder, and any software, modules, routines or algorithms which are developed by Nuvolo during the term in providing the Professional Services to Customer, provided such software, modules, routines or algorithms have general application to work performed by Nuvolo for its other customers and do not include any content that is specific to Customer or which, directly or indirectly, incorporate or disclose Customer's Confidential Information.

**7.6 Outside Property License.** To the extent that Nuvolo incorporates any Outside Property into any Deliverables, then Nuvolo hereby grants Customer a limited, royalty-free, non-exclusive, non-transferable (subject to Section 13.12), without right to sublicense, license to use such Outside Property delivered to Customer solely as necessary for and in conjunction with Customer's use of the Deliverables during the Subscription Term.

**7.7 Federal Government End Use Provisions (only applicable for the US).** Nuvolo provides the Subscription Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Subscription Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Nuvolo to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **8. CONFIDENTIALITY**

**8.1 Definition.** Confidential Information means: (a) Subscription Service (which is Confidential Information of Nuvolo); (b) Customer Data (which is Confidential Information of Customer); (c) any other information of a party that is disclosed in writing or orally and is designated as Confidential at the time of disclosure, or that due to the nature of the information the receiving party would clearly understand to be confidential information of the disclosing party; and (d) the specific terms and conditions of this Agreement, any Order Form, any SOW, and any amendment and attachment thereof. Confidential Information shall not include any information that: (i) is or becomes generally known to the public through no breach of this Agreement; (ii) was rightfully in the receiving party's possession at the time

of disclosure without restriction on use or disclosure; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) was or is rightfully obtained by the receiving party from a third party not under a duty of confidentiality and without restriction on use or disclosure.

**8.2 Obligations.** The recipient of Confidential Information shall: (i) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event less than reasonable care; and (ii) not use it except to the extent necessary to exercise rights or fulfill obligations under this Agreement. Each party shall limit the disclosure of the other party's Confidential Information to those of its employees and contractors with a need to access such Confidential Information for a party's exercise of its rights and obligations under this Agreement, provided that all such employees and contractors are subject to binding disclosure and use restrictions at least as protective as those set forth herein. Each party's obligations set forth in this Section 8.2 shall remain in effect during the term and three (3) years after termination of this Agreement.

**8.3 Required Disclosures.** A party may disclose the disclosing party's Confidential Information to a court or governmental body pursuant to a valid court order, law, subpoena or regulation, provided that the receiving party: (a) promptly notifies the disclosing party of such requirement to the extent advance notice is lawful; and (b) provides reasonable assistance to the disclosing party in any lawful efforts by the disclosing party to resist or limit the disclosure of such Confidential Information.

## 9. REPRESENTATION, WARRANTIES, REMEDIES AND DISCLAIMERS

**9.1 Nuvolo Representations and Warranties.** Nuvolo represents and warrants that (i) Nuvolo has the legal authority to enter into this Agreement, (ii) the Subscription Service will materially conform to the Documentation, (iii) absent a change to applicable law or regulation, the functionality and security of the Subscription Service will not be materially decreased during a Subscription Term, and (iv) Professional Services will be performed in a competent and workmanlike manner consistent with generally accepted industry standards.

**9.2 Remedies.** For any failure of any Subscription Service or Professional Services to conform to their respective warranties, Nuvolo's liability and Customer's sole and exclusive remedy shall be for Nuvolo, in the case of Customer providing notice of breach of the warranty set forth in Section 9.1 (ii) or (iii), Customer having submitted a customer support request to resolve such issue, is for Nuvolo to use commercially reasonable efforts to correct such failure; or, in the case of a breach of the warranty set forth in Section 9.1 (iv) to re-perform the affected Professional Services. If the foregoing remedies are not commercially practicable, Nuvolo may, in its sole discretion, terminate the applicable Order Form or SOW upon providing Customer with written notice thereof, and, as Customer's sole and exclusive remedy, refund to Customer (a) in the case of breach of the warranty set forth in Section 9.1(ii) or (iii), any Subscription Service fees paid by Customer with respect to the unexpired portion of the current Subscription Term for the non-conforming Subscription Service; or (b) in the case of breach of the warranty set forth in Section 9.1(iv), any fees paid by Customer for the portion of Professional Services giving rise to the breach. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to a modification of or defect in the Subscription Service that is made by any person other than Nuvolo or a person acting at Nuvolo's direction.

**9.3 Customer Representations and Warranties.** Customer represents and warrants that (i) it has the legal authority to enter into this Agreement, and (ii) it will use the Services in accordance with the terms and conditions set forth in this Agreement and in compliance with all applicable laws, rules and regulations.

**9.4 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NUVOLO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND NUVOLO HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY

PARTICULAR PURPOSE, OR ANY WARRANTY WITH RESPECT TO THE QUALITY, PERFORMANCE, ACCURACY OR FUNCTIONALITY OF THE SERVICES OR THAT THE SERVICES ARE OR WILL BE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

## 10. INDEMNIFICATION

**10.1 Indemnification by Nuvolo.** Nuvolo shall indemnify, defend and hold harmless Customer, its officers, directors and employees from and against any judgments, settlements and costs directly resulting from any third party suit, claim, action or demand (each a "Claim"), to the extent alleging that the Subscription Service infringes any third party patent, copyright or trademark, or misappropriates any third party trade secret; provided that Customer (a) promptly gives Nuvolo written notice of any such Claim; (b) gives Nuvolo sole control of the defense and settlement of such Claim (provided that Nuvolo may not settle any such Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to Nuvolo all reasonable assistance, at Nuvolo's expense. In the event of a Claim under this Section 10.1 or if Nuvolo reasonably believes the Subscription Service may infringe, Nuvolo may in its sole discretion: (a) contest the Claim; (b) obtain a license for Customer's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, without breaching its warranties hereunder; or (d) terminate Customer's use of the affected Subscription Service and refund any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the foregoing, Nuvolo shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent it arises from (i) Customer Data, (ii) use by Customer after notice by Nuvolo to discontinue use of all or a portion of the Subscription Service, (iii) use of the Subscription Service by Customer in combination with equipment or software not supplied by Nuvolo where the Subscription Service itself would not be infringing, or (iv) Customer's breach of this Agreement.

**10.2 Indemnification by Customer.** Customer shall indemnify, defend and hold harmless Nuvolo, its officers, directors and employees from and against any Claim to the extent alleging that: Customer Data infringes any third party patent, copyright or trademark, misappropriates any third party trade secret; provided that Nuvolo (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally releases Nuvolo of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

**10.3 Exclusive Remedy.** This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section.

## 11. LIMITATION OF LIABILITY

**11.1 Limitation of Liability.** THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, TORT, PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (1) CUSTOMER'S OBLIGATION TO PAY FOR THE SERVICES OR TAXES; (2) A PARTY'S OBLIGATIONS UNDER SECTION 10; AND (3) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**11.2 Exclusions.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR REVENUES, LOSS OF USE, COVER, SUBSTITUTE GOODS OR SERVICES, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO: (1) PAYMENTS TO A THIRD PARTY ARISING FROM A PARTY'S

OBLIGATIONS UNDER SECTION 10; AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 12. TERM AND TERMINATION

**12.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until terminated by written agreement of the parties, in accordance with Section 12.3 or there are no Order Forms or SOWs in effect.

**12.2 Renewal of Subscription Service.** Except as otherwise specified in the applicable Order Form, the Subscription Service shall automatically renew for successive periods equal to the most recent Subscription Term set out therein, unless and until terminated by either party in accordance herewith or unless either party provides written notice of non-renewal to the other party at least 30 days prior to the end of the then-current Subscription Term. Nuvolo may increase pricing applicable to the renewal of any then-current Subscription Term by providing Customer with notice thereof, including by email, at least 45 days prior to the end of such term.

**12.3 Termination.** A party may terminate this Agreement for cause if the other party (a) materially breaches this Agreement and fails to cure the breach within 30 days after written notice detailing the breach, or (b) becomes subject of a petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, and such petition or proceeding is not dismissed within 60 days. Professional Services are separately ordered from the Subscription Service and not required for the Subscription Service. A breach with respect to Professional Services shall not by itself constitute a breach with respect to the Subscription Service even if all are enumerated in the same Order Form.

**12.4 Refund or Payment upon Termination.** If Customer terminates this Agreement in accordance with Section 12.3, Nuvolo will refund Customer any prepaid fees covering the remainder of the Subscription Term of the applicable Order Form after the effective date of termination. If Nuvolo terminates this Agreement in accordance with Section 12.3, Customer will immediately pay all unpaid fees for the remainder of the Subscription Term of the applicable Order Form. In no event will termination relieve Customer of its obligation to pay fees payable to Nuvolo for the period prior to the effective date of termination.

**12.5 Customer Data Portability.** Customer may download any and all Customer Data during the Term and may request such data for up to thirty (30) days after the end of the Subscription Term.

**12.6 Surviving Provisions.** Sections 4.3, 6, 7, 8, 9.4, 10, 11, 12.4, 12.5, 12.6 and 13 will survive any termination or expiration of this Agreement.

## 13. GENERAL PROVISIONS

**13.1 Export Compliance.** The Subscription Service and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Nuvolo and Customer each represents that it is not named on any U.S. government denied-party list. Customer represents and warrants that it is not located in and will not permit any User to access or use the Subscription Service in a U.S.-embargoed country and is not in violation of any U.S. export law or regulation.

**13.2 Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a Nuvolo employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Nuvolo.

**13.3 Publicity and Reference.** Either party may publicly identify the other party as a customer or vendor, as applicable, using the other party's name and logo. Either party may issue a press release announcing Customer's selection of the Subscription Service, the text of which will be subject to the other party's prior written approval, not to be unreasonably withheld or delayed. Customer will use commercially reasonable efforts to act as a sales reference for Nuvolo upon request once per quarter, provided Customer is satisfied with the Subscription Service. Any such use of a party's name or logo shall be subject to the terms of the Agreement, and any trademark usage guidelines that such party may provide the other party.

**13.4 Force Majeure Event.** No party shall be liable or responsible to the other party, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (excluding Customer's failure to pay amounts owed when due), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes, trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, export bans, sanctions and other government actions, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate the effects of such Force Majeure Event.

**13.5 Subscription Service Analyses.** Nuvolo may (i) compile statistical and other information related to the performance, operation and use of the Subscription Service and (ii) use, and share data from the Subscription Service for security, product and operations management, to create statistical analyses and other derived data, for research and product development purposes (collectively referred to as "Subscription Service Analyses"). Subscription Service Analyses and resulting products and services will not incorporate any information, including Customer Data, in a form that could serve to identify Customer or an individual. Nuvolo retains all intellectual property rights in Subscription Service Analyses.

**13.6 Entire Agreement.** This Agreement is the entire agreement between Nuvolo and Customer regarding the Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties have expressly requested that this Agreement and all related documents be drafted in English.

**13.7 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**13.8 No Third-Party Beneficiaries.** There are no other third-party beneficiaries under this Agreement.

**13.9 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing to the addresses above and will be effective upon (a) personal delivery, (b) the fifth business day after mailing certified return receipt requested, (c) confirmed delivery by generally recognized international guaranteed overnight delivery service, or (d) except for notices of termination or an indemnifiable claim ("Legal Notices"), the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer, and Legal Notices to Customer will be addressed to Customer as set forth above. All other notices to Customer will be addressed to the relevant Subscription Service system administrator designated by Customer.

**13.10 Waiver.** No failure or delay by either party in exercising any right hereunder will constitute a waiver of that right.

**13.11 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, with all other provisions of this Agreement remaining in effect.

**13.12 Assignment.** Except as explicitly set forth herein, neither party may assign any right or obligation hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, together with all Order Forms and SOWs, without the other party's consent to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all assets.

Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**13.13 Governing Law.** This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules. The United Nations Convention on the International Sale of Goods does not apply to this Agreement. Notwithstanding any of the foregoing, either party may at any

time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's Confidential Information or intellectual property rights. Neither Party shall be liable to the other Party under or in connection with this Agreement or any Order Form, for any claim not made in writing within two (2) years (or within the applicable statutory limitation period if shorter) of the date the facts giving rise to the claim were known or ought reasonably to have been known by the claiming Party.