



## MASTER ORDERING AGREEMENT

This Master Ordering Agreement ("**Agreement**") between Nuvolo Technologies Corporation ("**Nuvolo**") and the customer set forth below ("**Customer**") is made as of the effective date set forth below ("**Effective Date**").

### 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 the right to control and direct the management and operations of the subject entity, whether by majority ownership, contract, or the ability to appoint a majority of directors.

**"Application Data"** means any electronic data uploaded by Customer's agents, employees, or contractors that is processed by the Subscription Service. For the avoidance of doubt, Customer is the data controller and Customer Data is hosted and stored by ServiceNow on the ServiceNow Platform.

**"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.

**"ServiceNow Platform"** means the hosted platform-as-a-service provided by ServiceNow to Customer under the "ServiceNow" brand on which the Subscription Service is made available.

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

**"Statement of Work" or "SOW"** means a written statement of work for Professional Services, that is entered into by Customer and Nuvolo.

**"Subscription Service"** means the software applications and tools made available by Nuvolo on the ServiceNow Platform via applicable logins, and associated Support Services, pursuant to 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 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 Customer's 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. Nuvolo may modify the Subscription Services or the systems and environment used to provide the Subscription Service provided Nuvolo does not materially degrade the functionality of the Subscription Service during the Subscription Term. Any subsequent updates, upgrades, enhancements to the Subscription Service made generally available to all subscribing customers without charge will also 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 an additional subscription and fee.

**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 only 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 to the Trial Services. Trial Services may contain bugs or errors, and may be subject to additional terms. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR IN ANY ORDER FORM, TRIAL SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND. 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 Nuvolo's 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 Support Services; (b) to provide Professional Services; (c) required disclosures in accordance with Section 9, or (d) as otherwise required for meeting its obligations or exercising its rights 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, except that Customer shall be solely responsible for ensuring compliance with any laws applicable to the Customer's industry that are not generally applicable to information technology services providers.

**3.4 Other Systems.** Notwithstanding anything to the contrary in this Agreement, NuvoLO's obligations extend only to those systems, networks, network devices, facilities and components over which NuvoLO exercises control. For clarity, the entirety of this Section 3 does not apply to: (i) any ServiceNow datacenter or any infrastructure within the sole control of ServiceNow and/or Customer, including the ServiceNow Platform; (ii) Customer Data including any Regulated Data hosted in Customer's ServiceNow instance; (iii) Customer Data including any Regulated Data in Customer's virtual private network (VPN) or third-party network; or (iv) 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 ServiceNow.

#### **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 may notify Customer. Within thirty (30) days after Customer receives such notification, or otherwise becomes aware of any use exceeding the permitted limits, 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) be responsible for preventing 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) 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 relating to its obligations under this Agreement, including 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: (i) use the Subscription Service or any Third Party Applications 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 the Subscription Service available for access by third parties except as expressly provided herein; (iii) access the Subscription Service for the purpose of developing or operating products or services intended to compete with it; (iv) disassemble, reverse engineer or decompile the Subscription Service (v) copy, create derivative works or otherwise modify the Subscription Service except as permitted in this Agreement; (vi) remove or modify a copyright or other proprietary rights notice in the Subscription Service; (vii) use the Subscription Service 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 the Subscription Service 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) use the Subscription Service to disable or gain unauthorized access to 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. Any use or procurement of Third-Party Applications by Customer or its Users is solely at Customer's discretion and risk, and is between Customer and the applicable third party. NuvoLO makes no warranty and has no liability for such Third-Party Applications.

#### **5. SERVICENOW PLATFORM**

**5.1 General.** The Subscription Service is developed and operates on the ServiceNow Platform. Customer must subscribe separately to one or more ServiceNow instances in order to use and access the Subscription Service. Customer is solely responsible for entering into an appropriate agreement with ServiceNow for the ServiceNow Platform. Customer must be, and as between Customer and NuvoLO, Customer is solely responsible for, operating on a supported ServiceNow subscription release in accordance with its ServiceNow agreement. Notwithstanding anything to the contrary in this Agreement, Customer acknowledges that if ServiceNow is inoperable, suspended, and/or terminates services to Customer, any Subscription Service on the affected ServiceNow instance will be inaccessible and NuvoLO will not thereby be deemed to be in breach of this Agreement, and all applicable amounts shall remain due and owing to NuvoLO in full. NuvoLO has no liability to Customer for any losses or harm occasioned by Customer's use of the ServiceNow Platform.

#### **6. SERVICES**

**6.1 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.

**6.2 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 should describe the Professional Services and any Deliverable to be delivered to Customer and the applicable fees for such Professional Services.

**6.3 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.

**6.4 Designated Contact and Cooperation.** For purposes of receiving Professional Services and Support Services, Customer shall: (i) provide NuvoLO with a designated Customer contact, (ii) cooperate with and provide accurate and complete information to NuvoLO as reasonably necessary for NuvoLO to provide the Professional Services and Support Services, (iii) provide NuvoLO with such assistance and access as NuvoLO may reasonably request, and (iv) fulfill Customer's responsibilities as set forth in this Agreement or the applicable Order Form or SOW. Each party agrees that it will inform the other party, receive the other party's express consent, and obtain appropriate releases from all involved personnel, prior to taking a video or other recording of an interaction between Customer and NuvoLO, including without limitation meetings and training sessions, and the recording party will promptly provide the other party with a copy of such recording. NuvoLO's Affiliates and contractors may perform all or part of the Professional Services hereunder, but NuvoLO remains responsible for performance of the services and compliance with this Agreement in the same manner as if the services were performed by NuvoLO. Notwithstanding

anything herein to the contrary, no personally identifiable information of NuvoIo personnel, other than name and work contact information including country location, shall be required to be provided to Customer.

## 7. FEES AND PAYMENT

**7.1 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 7.

**7.2 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. NuvoIo requires payment to be submitted via Automated Clearing House (ACH) or other electronic means. Customer shall provide NuvoIo with Customer's 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 NuvoIo and notifying NuvoIo 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, monthly in arrears.

**7.3 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 be of no effect and shall not modify the Order Form or this Agreement. Upon request, NuvoIo 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.

**7.4 Overdue Charges.** If any invoiced amount is not received by NuvoIo by the due date, then without limiting NuvoIo's other 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.

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

**7.6 Payment Disputes.** NuvoIo will not exercise its rights under Section 7.5 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, NuvoIo may exercise any rights or remedies under this Agreement relating to the fees, including assessing overdue charges. For avoidance of doubt, any undisputed amounts must be paid in full when due.

**7.7 Taxes.** NuvoIo'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 NuvoIo has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, NuvoIo will invoice Customer and Customer will pay that amount unless Customer provides NuvoIo with a valid tax exemption certificate authorized by the appropriate taxing authority which must be provided before the Effective Date. NuvoIo 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 NuvoIo of any changes to a Customer address specified in an Order Form. For clarity, NuvoIo is solely responsible for taxes assessable against it based on its income, property and employees.

**7.8 Affiliate Ordering.** Customer Affiliates may purchase the Subscription Service from NuvoIo by executing a separate Order Form which is governed by the terms of this Agreement, including the need for a separate ServiceNow instance. This will establish a new and separate agreement between the Customer Affiliate and NuvoIo.

**7.9 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 NuvoIo regarding future functionality or features.

## 8. INTELLECTUAL PROPERTY AND LICENSES

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

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

**8.3 License by Customer for Customer Data.** Solely to the extent required to provide the Subscription Service in accordance with this Agreement, Customer grants NuvoIo a worldwide, limited-term license to copy, transmit and display Customer Data. Subject to the limited license granted herein, NuvoIo acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data.

**8.4 License by Customer to Use Feedback.** Customer grants to NuvoIo 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. Feedback provided by Customer is considered Confidential Information of NuvoIo as defined in Section 9 of this Agreement.

**8.5 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. NuvoIo 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 NuvoIo 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 NuvoIo to the Outside Property while performing Professional Services hereunder, and any software, modules, routines, algorithms, or general know-how which are developed by NuvoIo during the term in providing the Professional Services to Customer, provided such software, modules, routines, algorithms, or general know-how have general application to work performed by NuvoIo for its other customers and do not include any content that is specific to Customer or which incorporate or disclose Customer's Confidential Information.

**8.6 Outside Property License.** To the extent that NuvoIo incorporates any Outside Property into any Deliverables, then NuvoIo hereby grants Customer a limited, royalty-free, non-exclusive, non-transferable (subject to Section 14.12), 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.

**8.7 Federal Government End Use Provisions (only applicable for the US).** NuvoIo 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.

## **9. CONFIDENTIALITY**

**9.1 Definition.** Confidential Information means: (a) Subscription Service and Documentation (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.

**9.2 Obligations.** The recipient of Confidential Information shall: (i) at all times protect it from unauthorized disclosure with at least 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, representatives, 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, representatives, 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 9.2 shall remain in effect during the term and five (5) years after termination of this Agreement.

**9.3 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.

## **10. REPRESENTATION, WARRANTIES, REMEDIES AND DISCLAIMERS**

**10.1 Nuvolo Subscription Service Warranty.** Nuvolo warrants that during the Subscription Term, the Subscription Service shall materially conform to the release notes as specified in the Documentation. To submit a warranty claim under this Section 10.1, Customer shall (1) reference this Section 10.1; and (2) submit a customer support request to resolve the non-conformity as provided in the Customer Support Policy. If the non-conformity persists without relief more than thirty (30) days after written notice of a warranty claim provided to Nuvolo under this Section 10.1, then Customer may terminate the affected Subscription Service and Nuvolo shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination. 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 or caused by any person other than Nuvolo or a person acting at Nuvolo's direction

**10.2 Nuvolo Professional Services Warranty.** Nuvolo warrants that any Professional Services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards.

**10.3 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 10.1 Customer having submitted a customer support request to resolve such issue and specifically citing a warranty claim, 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 10.1, and Customer providing Nuvolo notice of such alleged breach within thirty (30) days after the completion of the Professional Services, 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 10.1, 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 10.2, any fees paid by Customer for the portion of Professional Services giving rise to the breach.

**10.4 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.

**10.5 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.

## **11. INDEMNIFICATION**

**11.1 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 without Customer express written consent 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 11.1 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 materially reducing the functionality of the Subscription Services; 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 if 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, (iv) continued use by Customer after failure by Customer to implement an upgrade, modification, or replacement made available by Nuvoilo where such upgrade, modification, or replacement would have avoided the infringement, or (v) Customer's breach of this Agreement.

**11.2 Indemnification by Customer.** Customer shall indemnify, defend and hold harmless Nuvoilo, its officers, directors and employees from and against any Claim to the extent arising from Customer Data, including an allegation that Customer Data infringes any third party patent, copyright or trademark or misappropriates any third party trade secret; provided that Nuvoilo (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 without Nuvoilo's express written consent unless the settlement unconditionally releases Nuvoilo of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

**11.3 Exclusive Remedy.** This Section 11 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.

## **12. LIMITATION OF LIABILITY**

**12.1 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 11; AND (3) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**12.2 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 11; AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## **13. TERM AND TERMINATION**

**13.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until terminated by written agreement of the parties, in accordance with Section 13.3, or there are no Order Forms or SOWs in effect.

**13.2 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. Nuvoilo 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.

**13.3 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.

**13.4 Refund or Payment upon Termination.** If Customer terminates this Agreement in accordance with Section 13.3, Nuvoilo 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 Nuvoilo terminates this Agreement in accordance with Section 13.3, 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 Nuvoilo for the period prior to the effective date of termination.

**13.5 Customer Data Portability.** If desired by Customer, Customer must request any and all Customer Data from ServiceNow as Nuvoilo has no authorization to access or return such Customer Data hereunder.

**13.6 Surviving Provisions.** Sections 4.3, 7, 8, 9, 10.5, 11, 12, 13.4, 13.5, 13.6 and 14 will survive any termination or expiration of this Agreement.

## **14. GENERAL PROVISIONS**

**14.1 Export Compliance.** The Subscription Service and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Nuvoilo 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.

**14.2 Anti-Corruption.** Customer agrees to comply with all applicable anti-bribery and anti-corruption laws. Customer further agrees that it shall not pay, offer, promise, or authorize the payment of, either directly or indirectly, anything of value (including but not limited to cash or cash equivalents (such as stocks, gift cards, debit cards, travellers' cheques), gifts, entertainment, charitable donations or sponsorships, political donations or sponsorships, products, services, discounts, meals, travel, favors, loans, loan guarantees, the use of property or equipment, job offers, transportation, and the payment of expenses or debts) to any government official or employee of any government, official or employee of any department, agency, or instrumentality of a government, employee of any corporation or entity owned or controlled by a government, family member of such officials or employees, political party, party official, or political candidate; or other persons, owners, officers, directors, employees and agents of any corporation or entity to improperly or illegally assist in obtaining or retaining business (including but not limited to any contracts, avoidance of duties or reduction of tariffs, reduction of taxes or to obtain money owed, or to obtain regulatory approval) or for the purpose of causing, soliciting or inducing the sale and purchase of the Subscription Service or Professional Services by any party. Customer further agrees that it shall not request, receive, or agree to receive, directly or indirectly anything of value in an effort to assist Seller in obtaining or retaining business or in violation of any applicable anti-bribery or anti-corruption law. Customer agrees to notify Nuvoilo immediately of any request it receives to take any action that may constitute a violation of this clause.

**14.3 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 Nuvoilo 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.

**14.4 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.

**14.5 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.

**14.6 Entire Agreement.** This Agreement, and applicable Order Form or SOW, 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.

**14.7 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.

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

**14.9 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.

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

**14.11 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.

**14.12 Assignment.** Customer may not assign any right or obligation hereunder, whether by operation of law or otherwise, without Nuvolo’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.

**14.13 Governing Law.** Any disputes arising out of or related to this Agreement will be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules, and except as otherwise provided below, shall be adjudicated exclusively in the federal or state courts of the State of North Carolina. Each party specifically waives all objections to such jurisdiction and venue. 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.

**14.14 Counterparts.** This Agreement may be executed by electronic signature and in counterparts.