

## Nucleus Pass Through Master Solutions Agreement

PLEASE READ THIS MASTER SOLUTIONS AGREEMENT (THE “AGREEMENT”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY NUCLEUS SECURITY, INC. (“NUCLEUS”) AND ITS AFFILIATES. THIS NUCLEUS PASS-THROUGH MASTER SOLUTIONS AGREEMENT (THE “AGREEMENT”) CONSTITUTE A CONTRACT BETWEEN NUCLEUS AND YOU (“CUSTOMER”) FOR YOUR USE OF AND ACCESS TO THE SERVICES OBTAINED VIA A RESELLER. NUCLEUS WISHES TO PROVIDE AND YOU WISH TO HAVE THE RIGHT TO ACCESS PURSUANT TO THE TERMS OF THIS AGREEMENT, A SUBSCRIPTION SERVICE. BY ACCESSING THE SERVICES, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, ORGANIZATION OR OTHER ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY AND ARE AGREEING TO THIS AGREEMENT ON BEHALF OF SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY TO ENTER INTO THIS AGREEMENT OR DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

### 1. Definitions. For purposes of this Agreement:

- **“Affiliate”** means an entity that directly, or indirectly through one or more entities, controls, is controlled by, or is under common control with, the specified entity.
- **“Asset”** means a unique device, host, server, workstation, network appliance, or software application that appears in scan/vulnerability data uploaded in Nucleus.
- **“Business Hours”** means 9am – 5pm Eastern Time (ET)
- **“Confidential Information”** means all information or material provided by one party hereunder (the “Disclosing Party”) to the other party (the “Receiving Party”) which (i) gives a party some competitive business advantage, gives a party the opportunity of obtaining some competitive business advantage, or the disclosure of which could be detrimental to the interests of a party; and (ii) is either (a) marked “Confidential,” “Restricted,” or “Proprietary Information” or other similar marking, (b) known by the parties to be considered confidential and proprietary, or (c) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. The Documentation and Products are deemed the Confidential Information of Nucleus.
- **“Customer Cause”** means any of the following:
  - any improper use, misuse, or unauthorized alteration of the Products by Customer;
  - any use of the Products by Customer in a manner inconsistent with the then-current Documentation;
  - the use by Customer of any hardware or software not provided by Nucleus or approved by Nucleus for use by Customer in connection with the Software; or
  - the use of a non-current version or release of the Software.
- **“Documentation”** means Nucleus’s then-current generally available documentation, specifications, user manuals, etc. for the Products and Services, located at <https://help.nucleussec.com> or such other URL as Nucleus may provide from time to time.
- **“Fault”** means an error, flaw, failure, or bug in the Products.
- **“Help Desk Support”** means any support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the Products and Services.
- **“Order”** means either a sales quote or a statement of work issued by Nucleus and signed or otherwise accepted by Customer’s Reseller.
- **“Products”** means any Software and/or Web Services that Nucleus offers to Customer, including any

Documentation.

- **“Privacy Policy”** means Nucleus’s Privacy Policy found at <https://www.nucleussec.com/privacy-policy/> or such other URL locations which can be found on Nucleus’s website as Nucleus may provide from time to time.
- **“Seats”** means the number of Users granted access to the Products at any given time. Seats in the context of this Agreement will only apply to **“Active Users”**. If a User de-activates their account, it opens a Seat up for another User. Nucleus retains information within the Cloud-based Software for de-activated User accounts so to preserve the account if re-activated by the User.
- **“Services”** means any professional services, including implementation and installation services agreed upon by the parties and set forth in an Order, or any Support Services purchased pursuant to an Order.
- **“Software”** means the object code version of any software that may be licensed by Nucleus to Customer under an Order for usage or installation on Customer’s systems.
- **“Support Hours”** means, for Australia, 8a – 6p Australian Eastern Time and for the rest of the world, 8a – 6p US Eastern Time, Monday through Friday, except Nucleus-recognized holidays.
- **“Support Services”** means maintenance of the then-current version or release of the Products, including Help Desk Support.
- **“Users”** means any of Customer’s employees, customers or other third parties to which the Customer gives access to the Products.
- **“Web Service”** means an application and/or database product hosted by Nucleus or its agents and made available for remote access and use by Customer under an Order.

## 2. Trial Period.

**2.1 Trial Period.** If Customer acquires any Products on a trial basis (the “Trial Products”), then Customer will have a period of thirty (30) days from the day the Trial Products are made available to Customer to evaluate the Product (the “Trial Period”). During the Trial Period, all terms and conditions of this Agreement will apply, except that (i) no fees will be due from Customer; (ii) such Products and any Services provided by Nucleus with regard to such Products will be provided without warranties or indemnities of any kind, entirely on an “as-is” basis (e.g., the provisions of Sections 7 (Support Services), 10.1 (Product Warranties), 10.2 (Service Warranties), and 11.1 (Nucleus Indemnity Obligations) will not apply); and (iii) additional trial terms and conditions may appear on the trial registration web page or on the applicable Order. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**2.2 Trial Disclaimer.** CUSTOMER DATA ON NUCLEUS SYSTEMS OR IN NUCLEUS’S POSSESSION OR CONTROL, REPORTS, AND ANY CUSTOMIZATIONS MADE TO THE PRODUCTS BY OR FOR CUSTOMER’S BENEFIT DURING THE TRIAL PERIOD MAY BE PERMANENTLY LOST OR DELETED AT THE END OF THE TRIAL PERIOD.

## 3. Products.

**3.1 Software License.** This Section applies only in the event Customer’s Reseller licenses Software from Nucleus pursuant to an Order. Subject to Customer’s payment of all relevant fees, Nucleus hereby grants to Customer (including its Affiliates) and Customer’s authorized Users, solely for internal purposes, and not for resale or publication, a limited, non-exclusive, non-sublicensable, non-transferable (except pursuant to Section 14.6 (Assignment)), fully-paid, royalty-free license to use, execute, display, and access the Software. The initial term of the foregoing license will be as set forth in the applicable Order. Apart from the foregoing limited licenses, Customer is not being granted any right, title, or interest in or to the Software Products. All such rights are expressly reserved by Nucleus.

**3.2 Web Services Access.** This Section applies only in the event Customer’s Reseller orders Web Services from Nucleus pursuant to an Order. Subject to Customer’s payment of all relevant fees, Nucleus hereby grants to Customer a non-exclusive, non-transferable (except pursuant to Section 14.6 (Assignment)), right to access and use for its internal business purposes the Web Services as specified in an Order specifying the Products and Services to be

provided hereunder that is entered into between Customer and an entity that is authorized by NUCLEUS to resell and license access to the Products and Services to Customer (the “Reseller”). The initial term of the foregoing access right will be as set forth in the applicable Order. Customer shall be solely responsible for connection of Customer’s systems to a telecommunications service that provides Internet access for purposes of Customer’s access and use of the Web Services.

**3.3 Beta Product.** Nucleus may offer “Beta Products” to Customer at no charge. Use of the Beta Products are at the election of Customer and are for evaluation purposes only. Beta Products are not considered “Products” and do not come with Support Services. Beta Products may be subject to additional terms. Nucleus reserves the right to discontinue the Beta Products at any time. Beta Products will automatically terminate at such time as Nucleus makes such Beta Products generally available. Beta Products may be unpredictable and lead to erroneous results. Customer acknowledges and agrees that: (i) Beta Products are experimental and have not been fully tested; (ii) Beta Products may not meet Customer’s requirements; (iii) the use or operation of any Beta Products may not be uninterrupted or error free; (iv) Customer’s use of any Beta Product is for purposes of evaluating and testing the Beta Product and providing feedback to Nucleus; (v) Customer shall inform its employees, staff members, and other users regarding the nature of Beta Product; and (vi) Customer will hold all information relating to Beta Products and Customer’s use of Beta Products, including any performance measurements and other data relating to Beta Products, in strict confidence and shall not disclose such information to any unauthorized third parties. Customer shall promptly report any errors, defects, or other deficiencies in any Beta Product to Nucleus. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA PRODUCTS ARE PROVIDED “AS-IS” AND “AS- AVAILABLE,” WITHOUT WARRANTIES OR INDEMNITIES OF ANY KIND. Customer hereby waives any and all claims, now known or later discovered, that Customer may have against Nucleus and its suppliers and licensors arising out of Customer’s use of the Beta Products.

**3.4 Updates.** Nucleus reserves the right to update the Products from time-to-time, but makes no guarantee as to the availability of such updates.

#### **4. Product Usage & Rights.**

**4.1 Acceptance.** All sales are final, non-refundable, and non-returnable except with respect to Products that do not meet applicable specifications in the relevant Documentation.

**4.2 Product Term.** The applicable term for each Product is set forth in the applicable Order.

**4.3 Intellectual Property.** This is not a work made-for-hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code). Nucleus and its licensors own all right, title, and interest, including intellectual property rights, in the Products and all enhancements, modifications, and updates thereto, as well as the results of any Services performed hereunder. Except for express licenses granted in this Agreement, Nucleus is not granting or assigning to Customer any right, title, or interest, express or implied, in or to Nucleus’s intellectual property. Nucleus reserves all rights in such property.

**4.4 Feedback.** Customer may provide Nucleus with suggestions, comments, or other feedback (collectively, “Feedback”) with respect to the Products. Feedback is voluntary. Nucleus is not obligated to hold it in confidence. Nucleus may use Feedback for any purpose without obligation of any kind. To the extent a license is required under any Customer intellectual property rights to make use of the Feedback, Customer grants Nucleus an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Nucleus’s business, including the enhancement of the Products.

**4.5 Open Source/Third Party Software.** The Products may use or include open-source software components (“OSS”) or third party software (“TPS”). To the extent so stipulated by the license that governs each OSS or TPS (“OSS/TPS License”), each such OSS and TPS is subject to its respective OSS/TPS License, not this Agreement, and is licensed to Customer directly by its respective licensor, not sublicensed by Nucleus. If, and to the extent, an OSS/TPS License requires that this Agreement effectively impose, or incorporate by reference, certain disclaimers, provisions, prohibitions or restrictions, then such disclaimers, provisions, prohibitions or restrictions shall be deemed to be imposed, or incorporated by reference into this Agreement, as required, and shall supersede any conflicting provision of this Agreement, solely with respect to the corresponding OSS and TPS which is governed by such OSS/TPS License.

## 5. Data.

**5.1 Customer Data.** Customer grants Nucleus and its Affiliates a non-exclusive, world-wide, royalty-free license to use the data and other information input by Customer into the Products (“**Customer Data**”): (i) to perform Nucleus’s obligations under this Agreement; (ii) in compliance with the Privacy Policy; and (iii) as may be required by law. Customer will be responsible for obtaining all rights, permissions, and authorizations to provide the Customer Data to Nucleus for use as contemplated under this Agreement. Except for the limited license granted in this Section, nothing contained in this Agreement will be construed as granting Nucleus any right, title, or interest in the Customer Data. Customer Data shall be deemed Customer Confidential Information.

**5.2 Aggregated Data.** Nucleus may also use Customer Data in an aggregate, de-identified, and generic manner for marketing, survey, and benchmarking purposes, in the review and development of current and future Products, Product usage, and other similar purposes (“**Aggregated Data**”). Aggregated Data: (i) is used only for internal administrative purposes and general usage statistics; (ii) does not identify Customer or any individual; and (iii) to the extent such Aggregated Data is disclosed, it is only disclosed in a generic or aggregated manner for the purposes of sharing Product usage, statistical, or benchmarking purposes. Aggregated Data will not be considered Customer Confidential Information.

**5.3 Data Security.** Customer Data is maintained using industry standard administrative, physical, and technical safeguards that are designed to provide for the protection of the security, confidentiality, and integrity of Customer Data. Nucleus’s security safeguards include means for preventing access, use, modification, or disclosure of Customer Data by unauthorized individuals. Notwithstanding the foregoing, Customer Data access may be provided (i) to Nucleus and other personnel to the extent necessary provide Products and Services; (ii) as compelled by law in accordance with Section 9.1(v); (iii) as set forth in the Privacy Policy; or (iv) as expressly permitted by Customer.

**5.4 Privacy.** The collection, use, and disclosure of Customer Data in connection with Customer’s use of the Products is subject to the Privacy Policy. Customer hereby acknowledges and agrees that all Users will review and consent to the Privacy Policy before accessing or using the Products. By using the Products, Customer, and each User acknowledges that the Customer Data will be processed in accordance with the Privacy Policy and this Agreement and may be processed in a country where it was collected, as well as in countries where privacy laws may be different or less stringent. By using the Products or submitting Customer Data via the Products, Customer and each User expressly consents to such processes. To the extent Customer or a User provides personal or confidential information about a named person or entity that is not a User, Customer or the applicable User represents that it has that person’s or entity’s consent to do so.

## 6. Customer Obligations.

**6.1 Connectivity.** Customer is solely responsible for all telecommunication or Internet connections and associated fees required to access and use the Products, as well as all hardware and software on the Customer site. Nucleus is not responsible for (i) Customer’s access to the Internet; (ii) interception or interruptions of communications through the Internet; or (iii) changes or losses of data through the Internet.

**6.2 User Credentials.** Customer shall keep the User credentials (e.g., usernames and passwords) confidential and not disclose any such credentials to any third party. In addition, Customer shall notify Nucleus immediately upon discovery of the disclosure of any such credentials, and upon any termination of the engagement of any employees or agents of Customer with knowledge of any such credentials, so that such credentials can be changed.

**6.3 Restrictions.** Customer may not: (i) reverse engineer, disassemble, decompile, or otherwise attempt to reveal the trade secrets or know how underlying the Products, except to the extent expressly permitted under applicable law; (ii) use Nucleus’s intellectual property and Confidential Information to develop a product that is similar to the Products; (iii) use any Nucleus Confidential Information to contest the validity of any Nucleus intellectual property; (iv) remove or destroy any copyright notices or other proprietary markings or confidentiality legends placed on or made available through the Products; (v) use the Products in any manner or for any purpose inconsistent with the terms of this Agreement or the Documentation; or (vi) copy, reproduce, distribute, rent, loan, sell, transfer, grant any license, sub-license or otherwise make available Products to third parties except as expressly permitted in this Agreement. Products shall only be used for the licensed number of Assets for which Customer has paid the applicable fees.

**6.4 Export/Import Control Compliance.** The sale, resale or other disposition of Products and any related technology or Documentation may be subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Customer is solely responsible for complying with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export or import any Products to any country to which such export or transmission is restricted or prohibited. Customer understands and acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

**6.5 Exclusions.** Notwithstanding the foregoing, Nucleus will have no obligation to support: (i) services, hardware, or software provided by anyone other than Nucleus; (ii) Product issues caused by Customer Causes or Customer's negligence, abuse, or misapplication; (iii) Customer's use of Products other than as specified in the Documentation; or (iv) or by other factors beyond the control of Nucleus.

## **7. Payment Terms.**

**7.1 Prices.** Payment of fees for the Products and Services (the "Fees") is solely between Customer and Reseller. Notwithstanding the foregoing, Customer acknowledges that if any payments owed by Reseller to Nucleus for the Products and Services, with respect to Customer, are ten (10) or more days overdue, Nucleus may, without limiting its other rights and remedies, suspend the Products and Services after using commercially reasonable efforts to notify Customer of such overdue payment obligations.

### **7.2**

## **8. Confidentiality.**

**8.1 Exceptions; Compelled Disclosure.** "Confidential Information" does not include information that: (i) is or becomes publicly available other than as a result of a breach by the Receiving Party of this Agreement; (ii) was previously known to the Receiving Party prior to the date of disclosure, as evidenced by contemporaneous written records; (iii) was acquired by the Receiving Party from a third party which was not in breach of any obligation of confidentiality; or (iv) was independently developed by the Receiving Party hereto without reference to Confidential Information of the Disclosing Party. In the event that the Receiving Party is required to disclose Confidential Information pursuant to a subpoena or other similar order of any court or government agency, the Receiving Party shall promptly inform the other Disclosing Party in writing and provide a copy thereof (unless notice is precluded by the applicable process), shall only disclose that Confidential Information necessary to comply with such subpoena or order, and shall use reasonable efforts to obtain confidential treatment of such information.

**8.2 Protection of Confidential Information.** Except as expressly provided in this Agreement, the Receiving Party will not use or disclose any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent, except disclosure to and subsequent uses by the Receiving Party's employees or consultants on a need-to-know basis, provided that such employees or consultants are bound to obligations of confidentiality that are at least as restrictive as the Receiving Party's obligations under this Section 9. Subject to the foregoing nondisclosure and non-use obligations, the Receiving Party agrees to use at least the same care and precaution in protecting such Confidential Information as the Receiving Party uses to protect the Receiving Party's own Confidential Information and trade secrets, and in no event less than reasonable care. Each party acknowledges that due to the unique nature of the other party's Confidential Information, the Disclosing Party may not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the Disclosing Party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

**8.3 Return and Destruction of Materials.** All documents and other tangible objects containing or representing Confidential Information that have been disclosed by either party to the other party, and all summaries, copies, descriptions, excerpts or extracts thereof that are in the possession of the Receiving Party, shall be and remain the property of the Disclosing Party and shall be promptly returned to the Disclosing Party, and the Receiving Party shall use reasonable efforts to promptly delete or destroy all summaries, copies, descriptions, excerpts, or extracts thereof in their possession, upon the Disclosing Party's written request. The Receiving Party shall have no obligation to delete or destroy copies that: (i) are contained in an archived computer system backup that was made in accordance with such party's security, e-mail retention, and/or disaster recovery procedures; or (ii) are kept by it for record-keeping,

archival, or governance purposes in compliance with such party's document retention policies. Any such retained Confidential Information shall remain subject to the terms and conditions of this Agreement for so long as it is retained. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its confidentiality and other obligations hereunder in accordance with the terms of this Agreement. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this Section.

## **9. Warranties and Disclaimers.**

**9.1 Product Warranties.** Unless expressly provided otherwise in a Product warranty in terms and conditions accompanying a Product, Nucleus represents and warrants that all Products shall materially conform to their then-current Documentation. For Web Services, Customer must notify Nucleus of any breach of this warranty within thirty (30) days of the first occurrence of such breach. For Software, Customer must notify Nucleus within one (1) year of Customer's receipt thereof. Customer's sole and exclusive remedy, and Nucleus's sole and exclusive liability, for a breach of the foregoing warranty will be for Nucleus to provide Support Services to repair or replace the relevant Product or terminate the relevant Order and issue a refund for any pre-paid, unearned fees for the affected portion of the Product. Nucleus shall not be responsible for any breach of the foregoing warranty resulting from Customer's abuse or misuse of the Product or failure to use the Product as described in this Agreement or the Documentation, including failure to use the Product in accordance with its operational requirements.

**9.2 Service Warranties.** Nucleus warrants that Nucleus shall provide the Services in a professional, workmanlike manner consistent with generally accepted industry standards. Customer must notify Nucleus of any breach of this warranty within thirty (30) days of delivery. Customer's sole and exclusive remedy, and Nucleus's sole and exclusive liability, for a breach of the foregoing warranty will be for Nucleus, in its sole discretion, to use reasonable efforts to re-perform the Services or terminate the relevant Order and issue a refund for the portion of price paid for the non-conforming Services.

**9.3 Customer Warranties.** Customer represents and warrants that (i) it owns, or is a licensee of, having the right to sublicense, the Customer Data and that Customer has the right to grant Nucleus the rights that Customer purports to grant in this Agreement; (ii) Nucleus's possession or use of the Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; (iii) the Customer Data shall be free from viruses, trojan horses, or other similar elements which could harm the systems or software used by Nucleus to provide the Products; and (iv) it will not use, nor will it allow any third parties under its control to use, the Products or Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Products or Services could lead to death, personal injury, or environmental damage.

**9.4 Compliance Warranties.** Each party warrants that it will comply with all laws and regulations applicable to its provision or use of the Products or Services or performance of its obligations under this Agreement, as applicable (including applicable security breach notification law). In addition, each party represents and warrants that it has the full authority to enter into this Agreement and that it has the requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement.

**9.5 Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES IN THIS SECTION 10 OR ANY EXPRESS WARRANTIES PROVIDED IN TERMS AND CONDITIONS ACCOMPANYING A PRODUCT: (i) THE PRODUCTS ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND; AND (ii) NUCLEUS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NUCLEUS DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE PRODUCTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION, MARKETING OR PROMOTIONAL MATERIALS, OR ADVICE GIVEN BY NUCLEUS OR NUCLEUS'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES PROVIDED HEREIN.

**9.6** THE PRODUCTS MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT NUCLEUS AND ITS VENDORS AND

LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (i) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (ii) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER DATA, WEBSITES, COMPUTERS, OR NETWORKS. NUCLEUS WILL NOT BE RESPONSIBLE FOR THOSE ACTIVITIES. FURTHER, EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **10. Indemnification.**

**10.1 Nucleus Indemnity Obligations.** Nucleus will defend and indemnify Customer from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees) finally awarded against Customer, as approved via a court-approved settlement, or via binding mediation or arbitration arising from a claim by a third party that Customer's authorized use of a Product infringes that third party's United States patent, copyright, or trade secret rights. The foregoing indemnification obligation of Nucleus is contingent upon Customer promptly notifying Nucleus in writing of such claim (provided the failure or delay in doing so shall not relieve Nucleus from any obligations to indemnify Customer except to the extent that such delay or failure materially prejudices the defense of such claim), permitting Nucleus sole authority to control the defense or settlement of such claim, and providing Nucleus reasonable assistance (at Nucleus's sole expense) in connection therewith. If a claim of infringement under this Section occurs, or if Nucleus determines a claim is likely to occur, Nucleus will have the right, in its sole discretion, to either (i) procure for Customer the right or license to continue to use the Products free of the infringement claim; or (ii) modify the Products to make them non-infringing, without loss of material functionality. If neither of these remedies is reasonably available to Nucleus, Nucleus may, in its sole discretion, immediately terminate the related Order and, upon return of the infringing Products from Customer, refund any pre-paid, unearned Fees paid for such Products. Notwithstanding the foregoing, Nucleus will have no obligation with respect to any claim of infringement that is based upon or arises out of (a) the use or combination of the Products with any hardware, software, products, data, or other materials not provided by Nucleus; (b) modification or alteration of the Products by anyone other than Nucleus; (c) a breach by Customer of this Agreement, including use of the Products in excess of the rights granted in this Agreement, or any breach by Customer of any applicable law; (d) any specifications or other intellectual property provided by Customer; or (e) Customer's failure to comply with Nucleus's direction to cease any activity that in Nucleus's reasonable judgment may result in such a claim (collectively, the "**Excluded Claims**"). The provisions of this Section state the sole and exclusive obligations and liability of Nucleus and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Products or this Agreement, and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed.

**10.2 Customer Indemnity Obligations.** Customer will defend and indemnify Nucleus, its Affiliates, officers, directors, shareholders, employees, agents, successors, and assigns (the "**Nucleus Indemnified Parties**") and hold the Nucleus Indemnified Parties harmless from, any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees) incurred by any Nucleus Indemnified Party as a result of any claim by a third party arising from (i) Customer's use of the Products in breach of this Agreement; (ii) Nucleus's authorized use of the Customer Data; or (iii) the Excluded Claims. The foregoing indemnification obligation of Customer is contingent upon Nucleus promptly notifying Customer in writing of such claim (provided the failure or delay in doing so shall not relieve Customer from any obligations to indemnify Nucleus Indemnified Parties except to the extent that such delay or failure materially prejudices the defense of such claim), permitting Customer sole authority to control the defense or settlement of such claim, provided that Customer may not settle any such claim unless it unconditionally releases Nucleus of all liability, and providing Customer reasonable assistance (at Customer's sole expense) in connection therewith. For avoidance of doubt, Customer and Reseller are free to agree to indemnities with respect to the Services, and such indemnities shall not form part of this Agreement.

## **11. Limitations of Liability.**

**11.1** NEITHER NUCLEUS NOR ITS VENDORS AND LICENSORS SHALL HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, AND ANY SERVICES RENDERED HEREUNDER. THE TOTAL LIABILITY OF NUCLEUS AND ITS VENDORS AND LICENSORS TO CUSTOMER OR ANY THIRD

PARTY ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, AND ANY SERVICES RENDERED HEREUNDER FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE HEREUNDER BY CUSTOMER'S RESELLER TO NUCLEUS FOR THE PRODUCT OR SERVICE PROVIDED TO CUSTOMER AS TO WHICH THE LIABILITY RELATES, IN THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY. The allocations of liability in this Section represent the agreed, bargained-for understanding of the parties and Nucleus's compensation hereunder reflects such allocations. The limitation of liability and types of damages stated in this Agreement are intended by the parties to apply regardless of the form of lawsuit or claim a party may bring, whether in tort, contract, or otherwise, and regardless of whether any limited remedy provided for in this Agreement fails of its essential purpose.

**11.2** No action arising out of this Agreement may be brought by either party more than two (2) years after such cause of action accrues.

## **12. Term and Termination.**

**12.1 Term.** Subject to earlier termination by Nucleus as expressly provided for in this Agreement, this Agreement shall remain in place until all Orders related to the Products and Services have expired or terminated. ("Term"). The "Effective Date" shall be the date an Order signed by Customer's Reseller, or a purchase order issued by Customer's Reseller, is acknowledged by Nucleus.

**12.2 Suspension.** In the event Nucleus, in good faith, believes or otherwise becomes aware of a User's violation of this Agreement, then Nucleus may specifically request that Customer suspend such User's access to and use of the Products. In the event Customer fails to suspend such non-compliant User, Customer hereby authorizes Nucleus to suspend such User(s) or Customer entirely from access to and use of the Products. The duration of such suspension is at the sole determination of Nucleus and shall continue until such time as Nucleus determines that the applicable User has cured the breach resulting in such suspension. Nucleus may also suspend access and use of the Products with respect to any individual User or the Customer account to: (i) prevent damages to, or degradation of, the Products or Nucleus's systems; (ii) comply with any law, regulation, court order, or other governmental request; or (iii) otherwise protect Nucleus from potential legal liability. Any such suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the cause of the suspension.

### **12.3 Termination.**

**12.3.1** If Nucleus believes in good faith that Customer's Reseller's ability to make payments may be impaired, or if Customer's Reseller fails to pay any invoice when due and does not make such payment within ten (10) days after receipt of notice from Nucleus of such failure, Nucleus may, in its sole discretion, either: (i) suspend delivery or performance of any Order, or any remaining balance thereof, until such payment is made; or (ii) terminate any Order, or any remaining balance thereof.

**12.3.2** Either party may terminate the Agreement or an Order upon a material breach of the Agreement or Order by the other, if the breaching party does not cure the breach within thirty (30) days after receipt of written notice from the other party specifying the breach. Any termination of this Agreement pursuant to this Section 12.3.2 shall automatically terminate all Orders hereunder.

**12.3.3** Either party may terminate this Agreement for convenience upon written notice to the other party, subject to Section 12.4.1, provided however that all Orders existing at the time of such termination of this Agreement shall remain in effect and shall be performed in accordance with and subject to the terms and conditions of this Agreement (all of which shall survive with respect to such Orders) until expiration or termination of such Orders pursuant to this Agreement or the terms thereof.

**12.3.4** Either party may terminate this Agreement and all Orders upon written notice if the other party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership, or reorganization. Termination shall be effective upon receipt of the written notice.

### **12.4 Effects of Termination.**

**12.4.1** Upon any termination, Customer's right to use and access the Products shall immediately cease.



**12.4.2** After the effective date of termination of this Agreement, Nucleus shall have no obligation to maintain or provide Customer Data to Customer. Nucleus may, in its sole discretion, delete or destroy any Customer Data in its possession, unless Nucleus has a legal retention obligation. Prior to the expiration or termination, Customer may request, in writing, that Nucleus provide Customer with a copy of the Customer Data in its possession and in the form and format as such Customer Data exists of the effective date of such termination.

**12.4.3** The exercise of the right to terminate this Agreement and any Order shall be in addition to any other right and remedy provided in this Agreement or existing at law or equity that is not otherwise excluded or limited under this Agreement.

### **13. Miscellaneous Provisions.**

**13.1 U.S. Governmental Rights.** The Software Products are commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of any the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

**13.2 FOIA and Public Disclosure Requests.** The purpose of the relationship between Nucleus and Customer is for Customer to purchase a subscription to Nucleus's Vulnerability and Risk Management Platform, which contains software, content, and information for IT risk management, regulatory compliance, and vulnerability assessments. The software, web services, content, and information disclosed is proprietary to Nucleus and is an important business asset of Nucleus (the "**Proprietary Information**"). The Proprietary Information consists of protected financial data, trade secrets, and commercially valuable information that, if disclosed, would harm the competitive position of Nucleus. In the event of a request for disclosure of Nucleus's Proprietary Information, Customer will affirmatively respond denying the request pursuant to the terms of this paragraph and will promptly, but no later than five (5) business days after receiving such request, forward the request on to Nucleus. Customer shall not release any such Proprietary Information except pursuant to written instructions by Nucleus, or a final un-appealable court order, provided that any such disclosure shall be limited to the minimum necessary to be in compliance with the request, based upon the opinion of counsel. If Customer cannot agree to the foregoing, then Customer is not permitted access to the Proprietary Information.

**13.3 Third Parties** By accessing the Products and Services, Customer expressly agrees that Nucleus shall have the benefit of and right to enforce this Agreement against Customer, irrespective of Customer's agreements with any Reseller. Except for Nucleus' own benefit, nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement. No entities other than Nucleus and Customer may terminate, rescind or agree to any modification, waiver or settlement with respect to this Agreement.

**13.4 Service Work Assignments.** Nucleus retains the right to assign such personnel, including subcontractors, as it deems appropriate for the performance of any Services or the development, maintenance, or support of any Products.

**13.5 Independent Contractor.** Nucleus, its personnel, agents, subcontractors, and independent contractors are not employees or agents of Customer and are acting as independent contractors with respect to Customer. Neither party is, nor shall be considered to be, an agent, distributor, partner, joint venturer, or representative of the other party for any purpose, and neither party shall have the authority to act on behalf of, or in the name of, or to bind the other party in any manner whatsoever.

**13.6 Force Majeure.** Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than the payment obligations) resulting from acts or events beyond the reasonable control of such party, including acts of war, terrorism, acts of God, pandemic, earthquake, flood, embargo, riot, sabotage or dispute, governmental act. or failure of the Internet, power failure, energy interruption or shortages, other utility interruption, or telecommunications interruption provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

**13.7 Entire Agreement; Construction; Modifications.** This Agreement, including any and all Orders, constitutes the entire understanding between the parties related to this Agreement which understanding supersedes and merges all prior understandings and all other proposals, letters, agreements, oral or written. The parties further agree that there are no other inducements, warranties, representations, or agreements regarding the matters herein between the parties except as expressly set in this Agreement. In the event of any conflict between the body of this Agreement and any Order, the body of this Agreement shall control, unless language in a mutually executed Order explicitly states that it is intended to supersede a particular provision of this Agreement. In the event that the Customer, or its Users, are presented with Nucleus click-wrap, the contents of this Agreement shall supersede any conflicting terms. As used herein, the term “including” shall mean “including, without limitation;” the term “includes” as used herein shall mean “includes, without limitation;” and terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. This Agreement may not be modified, amended, or altered in any manner except by a written agreement signed by both parties, and any attempt at oral modification shall be void and of no effect.

**13.8 Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Nucleus. Any attempted assignment or delegation without such consent will be void and Nucleus may immediately terminate this Agreement for cause. Except as provided above, this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their successors and assigns.

**13.9 No Waiver.** The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed to be a waiver of any further right hereunder.

**13.10 Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to choice of law principles. The parties consent and submit to the jurisdiction and venue of the state and federal courts located in Delaware for any dispute relating to the terms, interpretation, or performance of this Agreement (other than claims for preliminary injunctive relief or other pre-judgment remedies). Notwithstanding the foregoing, Nucleus shall have the right to seek injunctive or pre-judgment relief in any court of competent jurisdiction to prevent or enjoin the misappropriation, misuse, infringement, or unauthorized disclosure of Nucleus’s Confidential Information or intellectual property rights. No Federal Acquisition Regulations shall be construed to apply to Nucleus without Nucleus’s written agreement thereto. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect. **THE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT.**

**13.11 Survivability.** All provisions of this Agreement relating to confidentiality, non-disclosure, intellectual property, disclaimers, limitation of liability, indemnification, and payment, and any other provisions which must survive in order to give effect to their meaning, shall survive the termination of this Agreement.

**13.12 Notices.** Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by hand delivery or by delivery service, upon receipt thereof; or (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid. All notices shall be addressed to the parties at the addresses specified in the opening paragraph of this Agreement or at such other addresses as either party may in the future specify in writing to the other. Notwithstanding anything to the contrary, any notice provided by Nucleus to Customer’s Reseller shall constitute valid notice to Customer under this Agreement.

**13.13 Headings.** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.