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- 10.15 Variations.** Any variation of, or amendments to, any terms of this EULA must be in writing and signed by both parties.
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Notwithstanding the foregoing, in the event that Licensee is a (i) public sector customer (e.g., federal, state, or local government) or (ii) public or private educational institution, in either case located in the United States of America, Canada, Mexico, Central America, or South America, or is one of such customers’ authorized agents worldwide, Licensee is contracting with Nuix USG Inc. under this EULA (such entity, in such case, “**Nuix**”).

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- 10.21 Arbitration.** SUBJECT TO **CLAUSE 10.22**, EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE, CONTROVERSY OR CLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OF FRAUD OR MISREPRESENTATION) ARISING OUT OF OR RELATING TO THIS EULA, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, (“DISPUTE”), SHALL BE SUBMITTED TO MANDATORY, FINAL AND BINDING ARBITRATION BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE, IN ACCORDANCE WITH THE INTERNATIONAL ARBITRATION RULES IN EFFECT AT THE TIME OF FILING OF THE DEMAND FOR ARBITRATION.
- (a) There shall be three (3) arbitrators. The Parties each will select one (1) arbitrator within thirty (30) days of the receipt by respondent of a copy of the demand for arbitration. The two (2) arbitrators so appointed shall nominate the third and presiding arbitrator (the “**Chair**”) within thirty (30) days of the appointment of the second arbitrator (the three arbitrators shall be collectively referred to as the “**Tribunal**”). If either Party fails to appoint an arbitrator, or if the two-party appointed arbitrators fail to appoint the Chair, within the time periods specified herein, such arbitrator shall, at the request of either Party, be appointed by the International Centre for Dispute.
- (b) The arbitrators shall be selected from a panel of persons having at least eight (8) years’ experience with knowledge of software license agreements and intellectual property rights, and at least one (1) of the arbitrators selected shall be an attorney.
- (c) The language of the arbitration shall be English. The place of arbitration shall be in Fairfax County, Virginia, USA.
- (d) The arbitration shall be the sole and exclusive forum for resolution of the Dispute, and the award shall be in writing, state the reasons for the award and be final and binding. Judgment thereon may be entered, registered or filed for enforcement in any court of competent jurisdiction and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- (e) By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the Tribunal shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitral tribunal’s orders to that effect. In any such judicial action each of the Parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid to the address set forth herein.
- (f) The prevailing Party, as determined by the Tribunal, shall be entitled to recover its reasonable costs and, attorneys’ fees and costs from the non-prevailing Party. The non-prevailing Party shall be responsible for all fees and costs of the Tribunal. The Tribunal may not award punitive damages.
- (g) Except as may be required by applicable law, the Parties shall preserve the confidentiality of all aspects of the arbitration, and shall not disclose to a third party (other than disclosure to an affiliate of a Party on a need-to-know basis and such affiliate is informed of the confidential nature of such information and is instructed to keep such information confidential), all information made known and documents produced in the arbitration not otherwise in the public domain, all evidence and materials created for the purpose of the arbitration, and all awards arising from the arbitration, except, and to the extent that disclosure is required by law or regulation, is required to protect or pursue a legal right or is required to enforce or challenge an award in legal proceedings before a court or other competent judicial authority.
- 10.22 Equitable Relief.** Notwithstanding anything in the foregoing to the contrary, each Party acknowledges that a breach or threatened breach of this EULA by the other Party or its Personnel will cause irreparable harm to the non-breaching Party for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by a Party or its Personnel, the non-breaching Party shall be entitled a temporary restraining order, injunction, specific performance and any other equitable relief available from a court of competent jurisdiction, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim. The existence of any claim or cause of action of the breaching Party against the non-breaching Party, whether predicated on this EULA or otherwise, shall not preclude the non-breaching Party’s right to equitable relief.
- 10.23 Definitions.** In this EULA: (a) “Commencement Date” means the earlier of the commencement date set out in the Quotation or the date on which Licensee first installs or uses the Software or otherwise agrees to be bound by the terms of this EULA; (b) “Confidential Information” means: (i) information, whether in visual, oral, documentary, electronic, machine-readable,

tangible, intangible or any other form, relating to Nuix or any Related Body Corporate of Nuix (including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter); (ii) negotiations in relation to, and the terms of, this EULA; (iii) information designated as confidential by Nuix; and (iv) information that is by its nature confidential; (c) "Documentation" means any documentation which accompanies the Software and is provided by Nuix to Licensee; (d) "EULA" means this End User License Agreement and includes the Quotation; (e) "Expiry Date" means the expiry date set out in the Quotation; (f) "Initial Term" means the period from the Commencement Date to the Expiry Date; (g) "Intellectual Property Rights" means any present and future rights conferred by statute, common law or equity throughout the world including rights in respect of or in connection with any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, business names, domain names, inventions or other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered or registrable and includes any right to apply for the registration, renewal and extension of such rights; (h) "License Fee" means the license fee set out in the Quotation; (i) "Licensee" means the entity who acquires the license rights from Nuix to use the Software pursuant to this EULA; (j) "Licensee Data" means all electronic data or information submitted to the Software by Licensee or any member of Licensee's Personnel; (k) "Nuix" has the meaning described in clause 10.18 ("Contracting Parties"); (l) "Nuix License Key" is an encrypted file provided by Nuix, which unlocks the Software and enables the use of the Software by a User; (m) "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party; (n) "Quotation" means the quotation(s) or other document(s) provided by Nuix to Licensee from time to time setting out details in relation to Licensee's use of the Software; (o) "Related Body Corporate" means a body corporate that is, in relation to another body corporate: (i) a holding company of that other body corporate; (ii) a subsidiary of that other body corporate; or (iii) a subsidiary of a holding company of that other body corporate; (p) "Renewal Term" means any further term granted by Nuix; (q) "Software" means the software (including any upgrades or updates) supplied by Nuix to Licensee; (r) "Taxes" means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any government or governmental, semi-governmental or administrative body, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity (which is not the subject of a valid certificate of exemption) including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalization, business, occupation, excise, income, profits or receipts; (s) "Term" means the Initial Term plus any Renewal Term(s); (t) "Territory" means the territory set out in the Quotation (or, in the absence of a territory in the Quotation, worldwide except for countries which are the subject of any United States trade restriction, export control or embargo); and (u) "User" means any person who uses the Software.

10.24 Interpretation. In this EULA: (a) the headings will not affect interpretation of this EULA; (b) the singular includes the plural and vice versa, and a gender includes other genders; (c) any other grammatical form of a word or expression defined in this EULA has a corresponding meaning; (d) the Quotation forms part of and is incorporated in this EULA; (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this EULA; (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; (g) a reference to a party is to a party to this EULA; (h) a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes; (i) a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity; (j) a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements; (k) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions; (l) a reference to any thing (including but not limited to any right) which includes part of that thing; (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds those parties jointly and severally; (n) any agreement, representation, warranty or indemnity in favor of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of those parties jointly and severally; (o) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing; (p) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this EULA or any part of this EULA; and (q) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.