



## NUIX DISCOVER SAAS TERMS OF USE

THESE TERMS OF USE (“**TERMS OF USE**” or “**TOU**”) GOVERN CUSTOMER’S USE OF NUIX DISCOVER SOFTWARE AS A SERVICE (THE “**SERVICES**”) AND ARE A LEGAL AGREEMENT BETWEEN CUSTOMER AND NUIX (AS DEFINED IN SECTION 12(a)). BY CLICKING THE “I ACCEPT” BUTTON, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND ACCEPTS THESE TOU. WHEN AN INDIVIDUAL AGREES TO THESE TOU AS A REPRESENTATIVE OF AN ENTITY, “CUSTOMER” REFERS TO THAT ENTITY, AND SUCH INDIVIDUAL REPRESENTS THAT SUCH INDIVIDUAL HAS THE AUTHORITY TO BIND THAT ENTITY. IF CUSTOMER DOES NOT AGREE WITH ALL THE TERMS OF USE SET FORTH HEREIN, CUSTOMER SHALL NOT USE THE SERVICES.

NOTWITHSTANDING THE FOREGOING, IF (1) CUSTOMER HAS A SIGNED AGREEMENT DIRECTLY WITH NUIX FOR THE USE OF THE SERVICES, OR (2) CUSTOMER HAS A SIGNED AGREEMENT WITH A SERVICE PROVIDER PARTNER FOR USE OF THE SERVICES, THE TERMS OF THAT AGREEMENT APPLY TO CUSTOMER AND THAT AGREEMENT SUPERSEDES THESE TOU.

### 1. Definitions.

“**Authorized User**” means Customer’s employees, consultants, and contractors who are authorized to access and use the Services under the rights granted to Customer.

“**CCPA**” means the California Consumer Privacy Act of 2018, as amended, and any rules and regulations implemented thereunder.

“**Confidential Information**” means the Services and any information disclosed by Nuix to Customer that is treated as confidential by Nuix, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing.

“**Customer Data**” means electronic documents, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted to the Services by or on behalf of Customer, including by any employee, consultant, contractor or an Authorized User of Customer.

“**DPA**” means the Data Processing Addendum set out here: <https://www.nuix.com/legal> (or any other such URL as Nuix makes available from time to time).

“**EU Data Protection Law**” means (i) “Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“**GDPR**”); and (ii) the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Addendums etc.) (EU Exit) Regulations 2019, together with the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Addendums etc.) (EU Exit) Regulations 2019.

“**Documentation**” means the then-current Nuix provided standard operating and technical documentation (generally available to all customers) relating to the features, functions and operation of the Services.

“**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.

“**Nuix IP**” means the Services, the Documentation, and any and all Intellectual Property Rights in each of the foregoing.

“**Order Form**” or “**Order**” means any ordering document executed by Customer and Nuix and specifying the Services to be provided by Nuix to Customer.

“**Person**” means an individual, firm, corporation (including non-profit corporation), partnership, company, estate, division, joint venture, limited liability company, governmental authority, agency, unincorporated organization, trust, association or other entity.

“**Personal Information**” or “**Personal Data**” means (i) all data that identifies an individual or, in combination with any other information or data available to a relevant entity, is capable of identifying an individual, and (ii) such other data that is defined as “personal information” or “personal data” under applicable law.



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“**Service Provider Partner**” means the Person that has contracted directly with Nuix to sell subscriptions to the Services to its customers and the Person that has contracted directly with a customer for the sale of a subscription to the Services.

“**Usage Data**” means data and information related to or arising from Customer’s use of the Services, including data regarding the manner, consistency, duration, usage pattern, memory, operating system, bandwidth, product errors, performance and other statistical information. Usage Data does not include Customer Data.

## **2. Services.**

a) **Access and Use.** Subject to Customer’s compliance with the terms and conditions set forth in these TOU, Nuix hereby grants to Customer during the Term, a non-exclusive, non-transferable, limited right to (i) access and use the Services for Customer’s own internal business purposes during the Term, solely for use by Authorized Users in accordance with the terms and conditions of these TOU and the Documentation, and (ii) use the Documentation during the Term solely for Customer’s internal business purposes in connection with Customer’s use of the Services. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and shall notify Nuix promptly of any such unauthorized access or use. Customer shall use the Services only in accordance with these TOU, and the Documentation.

b) **Reservation of Rights.** Nothing in these TOU grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any Intellectual Property Rights or other right, title, or interest in or to the Nuix IP. Nuix reserves all rights not expressly granted to Customer in these TOU.

c) **Use Restrictions.** Customer shall not make the Services available to anyone other than Authorized Users, and shall not use the Services for any purposes beyond the scope of the access granted in these TOU. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users or third parties to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) use the Services for any purpose other than its intended purpose; (vi) interfere with or disrupt the integrity or performance of the Services; or (vii) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

d) **Customer Representations, Warranties and Covenants Concerning Use.** Customer hereby acknowledges and agrees that Nuix may use global resources (personnel, affiliates and infrastructure around the world) and third-party suppliers to support the Services. Customer represents and warrants that it has obtained any necessary third-party permissions that may be required to input, store, or upload data into the Services environment. Customer will not input, store, or upload into the Services environment any data whatsoever that is subject to laws or regulations that require heightened or specific security measures, including, but not limited to: International Traffic in Arms Regulations, Export Administration Regulations, the Digital Millennium Copyright Act.

e) **Suspension.** Nuix may temporarily suspend Customer’s and any Authorized User’s access to any portion or all of the Services if: (i) Nuix reasonably determines that (A) there is a threat or attack on any of the Nuix IP; (B) Customer’s or any Authorized User’s use of the Nuix IP disrupts or poses a security risk to the Nuix IP or to any other customer or vendor of Nuix; (C) Customer, or any Authorized User, is using the Nuix IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Nuix’s provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Nuix has suspended or terminated Nuix’s access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 12(c) (any such suspension described in subclause (i), (ii) or (iii), a “**Service Suspension**”). Nuix shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Nuix shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Nuix will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

## **3. Intellectual Property.**

a) **Nuix IP.** Customer acknowledges that, as between Customer and Nuix, Nuix owns all right, title, and interest, in and to the Nuix IP, and all modifications, improvements and enhancements thereof. Nuix’s marks, logos and product names are marks of Nuix and Customer agrees not to use such marks without Nuix’s prior written consent. Customer shall promptly notify Nuix if Customer becomes aware of any possible infringement, violation or unauthorized use or access of Nuix’s Intellectual Property Rights arising out of or relating to the Services, and fully cooperate with Nuix, at Nuix’s expense (provided that Customer’s action did not contribute to the infringement) in any legal action taken by Nuix against third parties to enforce its Intellectual Property Rights.



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b) **Customer Data.** Nuix acknowledges that, as between Nuix and Customer, Customer owns all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. Customer hereby grants to Nuix a non-exclusive, royalty-free, worldwide license to reproduce, store, process and display to Customer the Customer Data and perform all acts with respect to the Customer Data in each case solely for Nuix to provide the Services to Customer.

c) **Usage Data.** Customer hereby grants Nuix a royalty-free, worldwide, non-exclusive, transferable, sub-licensable, irrevocable, and perpetual license to monitor, use, reproduce, distribute, modify and exploit Usage Data for Nuix's internal business purposes, including Nuix's use of Usage Data (i) to identify errors in the Services and monitor usage statistics, as necessary, for further development and implementation of improvements, or (ii) to compile statistical and performance information for internal purposes related to the provision and operation of the Services.

d) **Feedback.** Customer hereby grants Nuix a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Services or the Documentation any suggestions, enhancement requests, recommendations or other feedback provided by Customer or Authorized Users.

#### **4. Customer Obligations; Customer Data.**

a) **General.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of these TOU. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of these TOU if taken by Customer will be deemed a breach of these TOU by Customer. Customer shall make all Authorized Users aware of this TOU as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

b) **Monitoring of Data Usage.** Customer shall not reallocate data in a manner designed to avoid charges for the use of Active Data (as defined in the Order Form). Nuix reserves the right to monitor Customer's data usage records and Usage Data and to calculate fees based on Customer's use of Active Data based on the maximum volume at any time during the month. If such monitoring reveals that Customer has underpaid Nuix with respect to any amounts due and payable during the Term, Nuix will notify Customer of such underpayment and Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(b).

c) **Use of Customer Data.** Customer represents and warrants that it has obtained and will obtain all rights, permissions and consents, and has provided and will provide all notices, necessary for Customer and Nuix to use, transfer and otherwise process all Customer Data within and outside of the country in which Customer is located (including providing adequate disclosures and obtaining legally sufficient consents from Customer's employees, customers, agents, and contractors). Customer understands and acknowledges that Nuix may rely on the services provided by third parties to Nuix in connection with the provision of the Services. Nuix may provide Customer Data to such third parties in order to provide the Services. .

d) **Data Protection.** Customer will not provide Nuix with any Personal Information unless Customer obtains Nuix's prior written consent. With respect to any Personal Information that Nuix consents to process, Customer will notify Nuix in advance of the regulatory regime(s) to which such Personal Information is subject (e.g., EU Data Protection Law, CCPA, or legislation in force in Australia that affects privacy or any Personal Information (including the collection, storage, use or processing of such information), including the Australian Privacy Act 1988 (Cth) ("**Australian Privacy Law**")). Nuix will have no obligation to process Personal Information on behalf of Customer. To the extent that Nuix consents to process Personal Information subject to EU Data Protection Law, CCPA or Australian Privacy Law, the DPA applies. Customer will comply with applicable laws related to the processing of Personal Information that it provides to Nuix. In the event of a conflict between the terms of these TOU and the terms of the DPA, the terms of the DPA will prevail.

#### **5. Fees, Payment Terms and Taxes.**

a) **Fees; Payment Terms.** For each month of the Term, Customer shall pay Nuix the fees due with regard to the Services consumed by Customer during that month. The rates and prices for the Services shall be set forth in the applicable Order Form or invoice issued by Nuix, and the fees due shall be reflected in the Customer's invoice for that month. Unless otherwise set forth in the applicable Order Form, Customer shall pay all fees within 30 days of the date of the applicable invoice. All payments hereunder shall be in US dollars, unless otherwise specified in the Order Form, made by wire transfer and are non-refundable (except for any express refund provided for in the Order Form or at law).

b) **Late Payments.** Customer shall notify Nuix in writing of any dispute with any invoice (along with all relevant details regarding the dispute) within ten calendar days from the date of invoice. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct. All undisputed late payments shall bear interest at the lesser of the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, from the date such payment was due until the date paid. In addition to all other remedies available under these TOU, at law or in equity, Nuix shall be entitled to suspend Customer's access to the Services, if Customer fails to pay any amount when due hereunder as set forth in this Section 5.



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c) **Taxes.** Customer will pay any taxes, fees, duties, charges, withholding, penalty, fine or interest imposed by any governmental, administrative body, agency or authority in relation to the Services, as applicable, or otherwise in connection with these TOU ("Taxes"); provided, in no event shall Customer pay or be responsible for any Taxes imposed on, or with respect to, Nuix's income, revenues, gross receipts, personnel or real or personal property or other assets. If any such Tax has to be withheld or deducted from any payment under these TOU, Customer shall gross-up the payment under these TOU by such amount as shall ensure that after such withholding or deduction Nuix shall have received an amount equal to the payment otherwise required.

## **6. Laws.**

a) **Compliance.** Customer will comply with all applicable laws concerning Customer's use of the Services.

b) **Export Regulation.** The Services, the Documentation and the software and technology used by the Services (collectively, "**Controlled Technology**") is subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, and shall not permit any third parties to, export, re-export or release, directly or indirectly any Controlled Technology to, or make the Controlled Technology accessible from, a jurisdiction or country to which the export, re-export or release of any Controlled Technology is prohibited by applicable federal law, regulation or rule. Customer shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting or re-exporting any Controlled Technology. Customer shall provide prior written notice of the need to comply with such laws and regulations to any Person, firm or entity which it has reason to believe is obtaining any such Controlled Technology from Customer with the intent to export.

c) **Anti-Corruption; OFAC.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of Nuix in connection with these TOU. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Nuix. Customer represents and warrants to Nuix that none of (a) Customer, (b) each person or entity owning an interest in Customer nor (c) their respective personnel are (x) currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC") nor on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation, and (y) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. Any breach by Customer of this Section 6(c) shall be deemed a material, incurable breach of these TOU, and Nuix shall have the right to immediately terminate these TOU upon written notice to Customer.

d) **Non-Discrimination.** The parties shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to protected veteran status or disability.

## **7. Confidentiality.**

a) **Restrictions.** Customer shall: (a) not disclose or otherwise make available Confidential Information to any third party without the prior written consent of Nuix; *provided, however*, that the Customer may disclose Confidential Information to its affiliates, and its and their directors, officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 7; and (b) use the Confidential Information only for the purposes of performing its obligations or exercising its rights under these TOU.

b) **Exceptions from Restrictions.** Confidential Information shall not include information that: (a) is already known to the Customer without restriction on use or disclosure prior to receipt of such information from Nuix; (b) is or becomes generally known by the public other than by breach of these TOU by, or other wrongful act of, Customer; (c) is developed by Customer independently of, and without reference to, any Confidential Information of Nuix; or (d) is received by Customer from a third party who is not under any obligation to Nuix to maintain the confidentiality of such information.

c) If Customer becomes legally compelled to disclose any Confidential Information, Customer shall provide to Nuix: (i) if legally permitted to do so, prompt written notice of such requirement so that Nuix may seek, at its cost and expense, a protective order or other remedy; and (ii) reasonable assistance, at Nuix's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

d) If, after providing such notice and assistance as required herein, Customer remains required by law to disclose any Confidential Information, Customer shall disclose no more than that portion of the Confidential Information which, on the advice of Customer's legal counsel, Customer is legally required to disclose and, upon Nuix's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.



**NOT FOR EDITING**

**8. WARRANTY DISCLAIMER. THE SERVICES ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NUIX DOES NOT MAKE AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. NUIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NUIX MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, THE DOCUMENTATION, THE NUIX IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF GUARANTEES, CONDITIONS, WARRANTIES OR TERMS IMPLIED OR IMPOSED BY APPLICABLE LAW OR DO NOT ALLOW LIMITATIONS ON HOW LONG ANY SUCH GUARANTEE, CONDITION, WARRANTY OR TERM MAY LAST. AS A RESULT, NOT ALL OF THE LIMITATIONS IN THIS SECTION 8 WILL NECESSARILY APPLY TO EVERY CUSTOMER. NOTHING IN THESE TOU EXCLUDES, RESTRICTS OR MODIFIES ANY GUARANTEE, WARRANTY, TERM OR CONDITION, RIGHT OR REMEDY IMPLIED OR IMPOSED BY ANY APPLICABLE LAW WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED ("NON-EXCLUDABLE PROVISION"), SUBJECT TO SECTION 9(b) (NON-EXCLUDABLE STATUTORY PROVISIONS).**

**Statutory Warranty. If the law of any jurisdiction implies a warranty that cannot be excluded, that warranty will, to the extent permitted by law, continue for no more than a period of five (5) days from the date of acceptance of these TOU or the minimum duration permitted by such law, whichever is shorter.**

#### **9. Limitation of Liability.**

a) No Liability. IN NO EVENT WILL NUIX BE LIABLE TO CUSTOMER FOR ANY DAMAGES RELATED TO CUSTOMER'S PURCHASE OR USE OF THE SERVICES PURSUANT TO THESE TERMS OF USE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS OR FOR ANY BUSINESS INTERRUPTION LOSS, ANY LOSS OR CORRUPTION OF DATA, REVENUE, SAVINGS, PRODUCTION, BUSINESS, CONTRACTS, OPPORTUNITY, ACCESS TO MARKETS, GOODWILL, REPUTATION, PUBLICITY, INFORMATION, OR USE, OR ANY REMOTE, ABNORMAL, UNFORESEEABLE OR SIMILAR LOSS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES OR LOSSES WERE IN THE CONTEMPLATION OF EITHER PARTY; OR DAMAGES FOR CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST NUIX MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE, HOWEVER CAUSED, AND, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The limitations specified in this Section 9 will survive and apply even if any limited remedy specified in these TOU is found to have failed of its essential purpose.

b) NON-EXCLUDABLE STATUTORY PROVISIONS: TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF NUIX ARISING FROM THE BREACH OF A NON-EXCLUDABLE PROVISION (AS REFERRED TO IN SECTION 8) IS LIMITED, AT NUIX'S SOLE DISCRETION, TO: (A) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND (B) IN THE CASE OF SERVICES, THE SUPPLYING OF THE SERVICES AGAIN, OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

**10. Indemnification.** Customer will defend Nuix against any claim, demand, suit or proceeding made or brought against Nuix by a third party (i) alleging that any Customer Data infringes or misappropriates such third party's Intellectual Property Rights; (ii) arising from Customer's breach of these TOU, the Documentation, or applicable law; or (iii) based on Customer's or any Authorized User's (a) negligence or willful misconduct, (b) use of the Services in a manner not authorized by these TOU, (c) use of the Services in combination with data, software, hardware, equipment or technology not provided by Nuix or authorized by Nuix in writing, or (d) modifications to the Services not made by Nuix (each a "Claim Against Nuix"). Customer will indemnify Nuix for any damages, attorneys' fees and costs finally awarded against Nuix as a result of, or for any amounts paid by Nuix under a settlement approved by Nuix in writing, of a Claim Against Nuix; provided that Nuix: (i) promptly gives Customer written notice of the Claim Against Nuix, (ii) gives Customer sole control of the defense and settlement of the Claim Against Nuix, and (iii) provides to Customer all reasonable assistance, at Customer's expense. Customer may not settle any Claim Against Nuix unless Nuix consents to such settlement, and further provided that Nuix will have the right, at its option, to defend itself against any such Claim Against Nuix or to participate in the defense thereof by counsel of its own choice.

#### **11. Termination.**

a) Term. These TOU will be effective as of the Order Form Date of the first Order Form executed by Customer and Nuix, and will continue until the expiration or termination of all Order Forms, unless terminated earlier in accordance with the provisions of these TOU (the "Term").





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b) **Order Form Renewal Term.** Unless otherwise set forth in an applicable Order Form, or unless these TOU is terminated pursuant to this Section 11, or Customer provides Nuix with written notice at least ninety (90) days prior to expiration of the initial term set forth in the applicable Order Form (the “**Initial Term**”) or the then-current Renewal Term (as defined below), then upon expiration of the Initial Term or any Renewal Term, such Order Form will renew automatically for a subsequent twelve (12)-month renewal term (a “**Renewal Term**”) at a rate specified by Nuix. Nuix will always have the discretion whether or not to grant a Renewal Term to Customer.

c) **Termination.** Nuix may immediately suspend access to the Services or terminate these TOU or an Order Form at Nuix’s option, upon notice if: (a) Customer or any Authorized User breaches the terms of these TOU, the Documentation or Order Forms; (b) Nuix reasonably considers that Customer’s or any Authorized User’s has infringed, or threatens to infringe, the Nuix IP; (c) any amount due and payable by Customer is unpaid after Nuix has sent notice to Customer seeking payment and at least 30 days have passed since the date of such notice; or (d) Customer becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or makes or seeks to make a general assignment for the benefit of its creditors..

d) **Effect of Expiration or Termination.** Upon expiration or earlier termination of these TOU, Customer shall immediately discontinue use of the Services and the Nuix IP and shall delete, destroy, or return all copies of the Nuix IP and certify in writing to Nuix that the Nuix IP has been deleted or destroyed. All amounts owing by Customer to Nuix will become immediately due and payable and Customer will immediately pay all such amounts to Nuix. Customer must take such action as reasonably directed by Nuix for the protection of Confidential Information, Intellectual Property Rights and all other items of Nuix’s property. Customer must remove Customer Data from the Services within ten (10) days of the termination or expiration of these TOU. If Customer has not removed all Customer Data within such ten (10) day period, Nuix shall then delete any Customer Data remaining in the Services (but not including the backups of such Customer Data), and Nuix shall charge Customer for such deletion at a rate equal to Nuix’s then-current hourly professional services rate. All Customer Data will be unrecoverable, including from any backups, within ninety (90) days from the date of removal by Customer or Nuix. In no case will any termination, expiration, or suspension of the Services or these TOU give rise to any liability of Nuix to Customer for refunds or damages.

e) **Survival.** This Section and Sections 1, 2(c), 3(a), 3(c), 3(d), 6, 7, 8, 9, 10, 11(d) and 12 shall survive any expiration or termination of these TOU.

## 12. Miscellaneous.

a) **Governing Law and Jurisdiction.** The entity with which Customer is contracting under these TOU (such entity, as applicable, “**Nuix**”), what law will apply in any dispute arising out of or in connection with these TOU, and place of any arbitration or mediation, will depend on where Customer is domiciled:

If Customer is domiciled in:	Customer is contracting with:	Nuix Address:	Governing Law:	Place of Arbitration or Mediation:
United States of America (“U.S.”), Central America or South America	Nuix North America Inc.	13755 Sunrise Valley Drive, Suite 300, Herndon, Virginia, 20171	Commonwealth of Virginia, USA	Fairfax County, Virginia, U.S.
Canada	Nuix Canada Inc.	140 Yonge Street Suite 200 Toronto, Ontario M5C 1X6 Canada	Ontario, Canada	Ontario, Canada
Any country in Europe (other than the United Kingdom), the Middle East, or Africa	Nuix Ireland Limited	Registered Office: The Black Church St. Mary’s Place Dublin 7, D07 P4AX Ireland  Business Office for Notices: 3rd floor 12 South Mall Centre Cork T12 RD43 Ireland	England and Wales	London, England
United Kingdom	Nuix Technology UK Ltd	Registered Office: C/O Cogency Global (UK) Limited, 6 Lloyd’s Avenue, Suite 4CL, London, EC3N 3AX	England and Wales	London, England



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If Customer is domiciled in:	Customer is contracting with:	Nuix Address:	Governing Law:	Place of Arbitration or Mediation:
		Business Office for Notices: 5th Floor, 20 Midtown 20 Procter Street London WC1V 6NX		
Asia, Australia and New Zealand	Nuix Limited	1 Market Street, Level 27, Sydney, NSW 2000	NSW, Australia	Sydney, NSW, Australia

Notwithstanding the foregoing, in the event that Customer 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 U.S., or is one of such customers' authorized agents worldwide, or (iii) Nuix identifies itself as Nuix USG Inc. in the Order Form, Customer is contracting with Nuix USG Inc. (such entity, in such case, "**Nuix**").

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules. The United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to these TOU.

If there is a Dispute (as defined in Section 12(c)) between the parties relating to these TOU, the parties shall first attempt to resolve the Dispute by escalating the dispute within their respective organizations. If the parties are unable to resolve the Dispute within thirty (30) days after the complaining party's written notice to the other party, the parties will seek to resolve the Dispute through non-binding mediation conducted in the place of mediation identified above. Each party must bear its own expenses in connection with the mediation and must share equally the fees and expenses of the mediator. If the parties are unable to resolve the Dispute within sixty (60) days after commencing mediation, either party may commence (i) arbitration in accordance with Section 12(c), if Customer is domiciled outside of the U.S., or (ii) litigation in the state or federal courts in Fairfax County, Virginia, if Customer is domiciled in the U.S.

b) **WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THESE TOU IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TOU, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE VALIDITY, PROTECTION, INTERPRETATION OR ENFORCEMENT THEREOF.

c) **Arbitration.** EXCEPT WITH RESPECT TO A CUSTOMER DOMICILED IN THE U.S., SUBJECT TO SECTION 12(d), 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 THESE TOU, 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 RESOLUTION (SHOULD CUSTOMER BE DOMICILED ANYWHERE BUT THE U.S.), IN ACCORDANCE WITH THE INTERNATIONAL ARBITRATION RULES IN EFFECT AT THE TIME OF FILING OF THE DEMAND FOR ARBITRATION.

(1) 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 Resolution (as applicable).

(2) 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.

(3) The language of the arbitration shall be English. The place of arbitration shall be the location identified in Section 12(a) above.

(4) 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.



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(5) 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.

(6) To the extent permitted by applicable law, Nuix shall be entitled to recover its reasonable costs and, attorneys' fees and costs from Customer. The Customer shall be responsible for all fees and costs of the Tribunal. The Tribunal may not award punitive damages.

(7) 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.

d) **Customers Domiciled in the U.S.** Notwithstanding anything to the contrary in Section 12(c), with respect to any Customer domiciled in the U.S., Disputes shall not be submitted to arbitration, and shall be heard in the state and federal courts located in Fairfax County, State of Virginia and the parties hereby consent to exclusive jurisdiction and venue in such courts.

e) **Third Party Software.** Third party software may be incorporated into or necessary for the use of Services. Nuix makes no representations or warranties whatsoever, and shall have no liability whatsoever, with respect to third party software.

f) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and in English language, and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on Order Form (or to such other address that may be designated by a party from time to time in accordance with this Section).

g) **Assignment.** Customer may not assign any of its rights under these TOU, except with the prior written consent of Nuix. An amalgamation, merger, change in control, re-organisation or other similar transaction by Customer (including, but not limited to an asset sale, stock sale, reverse merger, reverse triangular merger) shall require consent pursuant to this Section 12(g). Furthermore, for the purposes of these TOU the (a) acquisition of an equity interest in Customer of greater than 25 percent by any third party, or (b) the acquisition of an equity interest by Customer of greater than 25 percent of any third party, shall be considered an "assignment." Customer may not delegate any performance under these TOU. Any purported assignment of rights or delegation of performance in violation of this Section is void. Nuix may freely assign these TOU.

h) **US Government Rights.** Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

i) **Severability.** If any provision, or the application of any provision, of these TOU is prohibited, invalid, void, illegal or unenforceable in any jurisdiction: (a) this will not affect the validity and enforceability of the provision or part in other jurisdictions; (b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and (c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of these TOU..

j) **Entire Agreement.** These TOU, including without limitation all exhibits attached hereto and all Order Forms, constitutes the entire agreement between the parties with respect to the subject matter hereof. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in these TOU are expressly merged into and superseded by these TOU. For the purpose of clarification, if there is any conflict or inconsistency between any provisions in the documents that comprise these TOU, the conflict or inconsistency will be resolved in the following order of precedence: the DPA, any special conditions in the Order Form, and then these TOU.





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k) **Waiver; Cumulative Rights.** The parties may waive a breach of these TOU only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay (i) in exercising any right or remedy, or (ii) in requiring the satisfaction of any condition, (iii) under these TOU, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other party. The parties may amend these TOU only by a written agreement signed by the parties that identifies itself as an amendment to these TOU. The rights arising out of these TOU do not exclude any other rights of either party.

l) **Construction.** The titles and headings of the various sections and paragraphs in these TOU are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of these TOU, which shall be considered as a whole.

m) **Relationship of the Parties.** Customer and Nuix enter into these TOU as independent contractors, and neither Customer nor Nuix will be or construed to be a partner, joint venturer, agent or employee of the other. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

n) **Third Party Beneficiaries; Rights.** These TOU is entered into solely for the benefit of Nuix and Customer. No third party (excepting a Nuix affiliate) will have the right to make any claim or assert any right under it, and no third party will be deemed a beneficiary of these TOU. Solely in the event that the law of England and Wales applies to these TOU, the Contracts (Rights of Third Parties) Act 1999 (the “Act”) shall not apply to these TOU and no Person other than the parties hereto (which term shall, for the purposes of this clause, include all permitted assignees) and Nuix affiliates shall have any rights under the Act, nor shall these TOU be enforceable under the Act by any Person other than the parties to it.

o) **Insurance.** Customer shall maintain at its own expense during the term of these TOU such insurance policies which are reasonably necessary to cover its obligations and potential liabilities under these TOU. Such coverage shall include: (a) professional liability (errors and omissions) insurance on an occurrence basis with minimum single limit coverage of \$1,000,000 per occurrence and \$5,000,000 aggregate; (b) cyber or internet liability in the amount of \$5,000,000 per claim/per aggregate to include privacy liability, credit monitoring, crisis management, notification costs, litigation and regulatory coverage (with coverage also applicable to loss or damage to third parties for whom services are performed), and (c) employee dishonesty/crime insurance with minimum single limit coverage per event of \$5,000,000 per claim. Such policies of insurance shall contain reasonable terms and conditions. Customer shall provide Nuix with proof of such insurance coverage and policies upon Nuix’s request.

p) **Customer System.** Customer is responsible for (a) obtaining, deploying and maintaining all computer hardware, software, modems, routers and other communications equipment necessary for Customer to use the Services; and (b) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in these TOU, or an Order Form, Nuix shall not be responsible for supplying any hardware, software or other equipment to Customer under these TOU.