



MASTER SUBSCRIPTION AGREEMENT

Version / Date: 27 March 2024

This Master Subscription Agreement, including all Sales Orders and Statements of Work agreed to by the parties (collectively, the “**Agreement**”), is between the entity identified in the Sales Order (“**Customer**”) and Nudge Security, Inc. (“**Nudge**”, “**we**” or “**our**”) and sets forth the terms and conditions under which Nudge will make available certain services and Customer will be permitted to use such services. This Agreement is effective as of the date set forth in the Sales Order or, if no effective date is specified, the date of Customer signature on the Sales Order (“**Effective Date**”). By signing the Sales Order, Customer and Nudge agree to be bound by the terms of the Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS

- a. “**Affiliate**” means any entity that is controlling, controlled by, or under the common control with a party to this Agreement.
- b. “**Application**” means the web-based service and sensors identified in the applicable Sales Order.
- c. “**Customer Data**” means the data inputted by Customer or its Users for the purpose of using an Application.
- d. “**Documentation**” user manuals and any other materials, including updates thereto, in any form or medium made generally available by Nudge to Users, regarding the proper installation and use of the Application.
- e. “**Support Services**” means ongoing maintenance and technical support services for the applicable Application.
- f. “**Sales Order(s)**” means the ordering documents authorized by Nudge for purchases of Services hereunder, including addenda thereto, that are entered into between Customer and Nudge from time to time.
- g. “**Services**” means each Application, Support Services, and Professional Services, collectively.
- h. “**Subscription Term**” for each Application means the period that Customer has the right to use such Application and associated Documentation as set forth in the applicable Sales Order, including the Initial Term and any Renewal Terms.
- i. “**Users**” means individuals who are authorized by Customer to use the applicable Application, including but not limited to Customer employees, consultants, contractors and agents.

2. USE OF THE APPLICATION

- a. Use of the Application and Documentation. Customer may only use the Application during the Subscription Term. Subject to the terms and conditions of this Agreement, Nudge hereby grants to Customer and Customer hereby accepts from Nudge a limited, nonexclusive, revocable, non-transferable (except as permitted in Section 10.b (Assignability)), non-sublicensable right during the applicable Subscription Term to allow Users to use the Application and Documentation in accordance with the scope of use specified in this Agreement.
- b. Use Limitations. Customer’s right to use each Application is subject to and contingent upon Customer’s compliance with the limitations on Customer’s use of such Application specified in the Agreement including user limitations referenced in Documentation.
- c. Reserved.

- d. Reservation of Rights. Nudge and its licensors retain all right, title, and interest to all software, products, works, and other intellectual property created, used, or provided by Nudge for the purposes of this Agreement, including, but not limited to, each Application and all Documentation. Nudge shall own all right, title, and interest in and to all modifications or derivatives of, and improvements to, each Application and all Documentation and any other part of the Services (created by either party). Customer hereby makes all assignments necessary to provide Nudge the ownership rights set forth in the preceding sentence.
- e. Customer Data. Nudge hereby acknowledges and agrees that all rights, title and interest in and to Customer Data are and shall remain the property of Customer and all intellectual property rights including copyright, trademark, and trade secret rights in Customer Data are and will remain the property of Customer. Customer hereby grants to Nudge, throughout the term of this Agreement and after the term as necessary for any of Nudge's post-termination obligations to Customer, the necessary rights or license to use Customer Data solely as necessary for Nudge to perform its obligations hereunder. Customer shall provide Nudge, in the form and format and on the schedule specified by Nudge, all Customer Data reasonably required for Nudge's performance hereunder. Customer will not provide any Customer Data subject to HIPPA or requiring PCI compliance. Customer grants Nudge a limited, nonexclusive, royalty free license to use such Customer Data during the Term in order to provide the Service to Customer and its Users and as necessary to access the Application to monitor and diagnose Customer performance related issues. Additionally, Customer agrees that Nudge may use the anonymized version of Customer Data to create, extract, or otherwise generate statistics and other general usage information and to otherwise compile, synthesize and analyze such Customer Data ("Blind Data"), provided Blind Data will only be used internally for improvement of Nudge Services. Customer shall be responsible for maintaining back-up on all Customer Data. Customer shall have the right to download all Customer Data at any time during the Term and for a period of thirty (30) days following termination or expiration for any reason. Thereafter, Nudge shall have the right to delete all Customer Data.
- f. Feedback. If Customer provides any feedback to Nudge concerning the functionality or performance of an Application (including identifying potential errors and improvements), Customer hereby assigns to Nudge all right, title, and interest in and to the feedback, and Nudge is free to use the feedback without payment or restriction, provided that such feedback does not include Customer Confidential Information.
- g. Support Services. Nudge shall provide its standard Support Services for the Application made generally available to its other customers.

3. CUSTOMER'S RESPONSIBILITIES

- a. Account Credentials. Customer is solely responsible for maintaining the confidentiality of the administrator and User logon identifications, passwords, and account information.
- b. Compliance and Use. Customer shall be responsible for Users' compliance with this Agreement; be responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquired Customer Data; use commercially reasonable efforts to prevent unauthorized access to or use of each Application and all Documentation and immediately notify Nudge in writing of any such unauthorized access or use or violation by Customer or its Users of this Agreement; use each Application only in accordance with the Documentation; and use each Application and all Documentation in compliance with applicable laws and government regulations. If there is unauthorized use of any Application or Documentation by anyone who obtained access to such Application or Documentation directly or indirectly through Customer, Customer will take all steps reasonably necessary to terminate the unauthorized use. Customer will cooperate and assist with any actions taken by Nudge to prevent or terminate unauthorized use of each Application or any Documentation. Customer may not make the Services available to anyone other than Users; use the Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; use the Services to store or transmit malicious code; interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or attempt to gain unauthorized access to the Applications or their related systems or networks.
- c. Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer shall not, and will not permit or authorize third parties to:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Applications;
 - ii. access all or any part of the Applications or Documentation in order to build a product or service that competes with the Services;
 - iii. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Applications or Documentation, or otherwise make the Applications or Documentation available to any third party (e.g., as a service bureau); or iv. circumvent or disable any security or other technological features or measures of the Applications.

4. PAYMENT AND FEES

- a. Fees. Customer will pay Nudge the fees and any other amounts owing under this Agreement, plus any applicable sales, use, excise, or other taxes which are due as a result of this Agreement. Unless otherwise specified in the applicable Sales Order, all amounts payable under this Agreement are denominated in U.S. dollars, and Customer will pay all such amounts in U.S. dollars.
- b. Renewal Fees. Nudge will give Customer at least 30 days' notice (which may be by email) of any increase in the Service fees, or any new charges and fees, prior to the end of the Initial Term (as defined in Section 5(b)) or any Renewal Term (as defined in Section 5(b)).
- c. Invoices and Payment Terms. The fees relating to accessing each Application (the "**Subscription Fees**") for the Initial Term will be invoiced upon execution of the applicable Sales Order and, for each Renewal Term, at the commencement of such Renewal Term. Fees for
- d. Professional Services will be invoiced upon execution of the applicable Sales Order, unless otherwise specified in such Sales Order. Unless otherwise expressly set forth on the applicable Sales Order, Customer will pay all amounts due within 30 days of the date of the applicable invoice. Customer acknowledges that Subscription Fees for Renewal Terms are due on or by the first day of such Renewal Term.
- e. Late Payments. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable attorneys' fees and court costs) incurred by Nudge to collect any amount that is not paid when due. In the event of default in the payment of any undisputed invoices, installments or interest for a period in excess of 60 days past their due date, Nudge may, without notice or demand, declare the entire principal sum payable during the Subscription Term under all outstanding Sales Orders, immediately due and payable. In the event Customer fails to timely make any payment under this Agreement, Nudge shall have the right to immediately discontinue all Service and terminate this Agreement upon written notice to Customer and collect any remaining balances. If Customer believes that Nudge has billed Customer incorrectly, Customer must notify Nudge thereof (in writing) no later than 60 days after the date of the invoice, otherwise the invoice amount shall be conclusively deemed correct by the parties. Amounts due from Customer under this Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason.
- f. Taxes. All payments for Services under this Agreement shall be made free and clear and without deduction for any and all present and future Taxes. Payments due to Nudge under this Agreement shall be increased so that amounts received by Nudge, after provisions for Taxes and all Taxes on such increase, will be equal to the amounts required under this Agreement if no Taxes were due on such payments. For purposes of this Agreement, the term "**Taxes**" means all income withholding taxes, levies, imposts, duties, fines, or other charges of whatsoever nature however imposed by any country or any subdivision or authority thereof in any way connected with this Agreement or any instrument or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes as are imposed on or measured by a party's net income or property. The Customer shall indemnify Nudge for the full amount of Taxes attributable to the provision of Services under this Agreement, and any liabilities (including penalties, interest, and expenses) arising from such Taxes, within 30 days from any written demand by Nudge party. The Customer shall provide evidence that all applicable Taxes have been paid to the appropriate taxing authority by delivering to Nudge receipts or notarized copies thereof within 30 days after the due date for such tax payments. Without prejudice to the survival of any other Agreement of Customer hereunder, the obligations of Customer contained in this Section 4 shall survive the payment in full of all payments hereunder.
- g. Suspension. Nudge may immediately suspend Customer's account and access to the Services if (i) Customer fails to make payment due within 10 business days after Nudge has provided Customer with written notice of such failure; or (ii) Customer violates Section 3.b (Compliance and Use), Section 3.c (Restrictions) or Section 6 (Confidentiality). Any suspension by Nudge of the Services under the preceding sentence will not relieve Customer of its payment obligations hereunder.

5. TERM, RENEWAL, AND TERMINATION

- a. Agreement Term. This Agreement will commence upon the Effective Date and continue for as long as there is a Sales Order still in effect unless this Agreement is terminated earlier as set forth herein. In the event there are no Sales Orders in effect for three months, this Agreement will automatically terminate.
- b. Subscription Term. The Subscription Term shall commence on the Subscription Start Date. The "**Subscription Start Date**" will be the same as the Effective Date. The Subscription Term will be in effect for the term specified in the Sales Order, provided that if no such term is indicated in the Sales Order the initial term shall be for one year ("**Initial Term**"). In the event Nudge provides Application to Customer

after the Effective Date, the Subscription Start Date shall be defined as the date Nudge provides the Application to the Customer. Customer is responsible and will pay Nudge all Subscription Fees under a Sales Order for the entire Subscription.

- c. **Termination for Material Breach.** Either party may terminate this Agreement if the other party does not cure its material breach of this Agreement within 30 days of receiving written notice of the material breach from the non-breaching party. Such termination right applies only to the applicable Sales Order and related Services for a particular Application and not to Sales Orders to other Applications governed by this Agreement. Termination in accordance with this Section 5.c will take effect when the breaching party receives written notice of termination from the non-breaching party, which notice must not be delivered until the breaching party has failed to cure its material breach during the 30-day cure period. If Customer fails to timely pay any fees, Nudge may, without limitation to any of its other rights or remedies, suspend performance of all Services for Customer until Nudge receives all amounts due. In the event of termination as a result of Customer's failure to comply with any of its obligations under this Agreement, Customer shall continue to be obligated to pay for Subscription Fees and any fees for Services rendered. Termination of the Agreement or any Sales Order shall be in addition to and not in lieu of any equitable remedies available to Nudge.
- d. **Survival.** 2.d (Reservation of Rights), 2.f (Feedback), 4.a (Fees), 4.d (Invoices and Payment Terms), 4.e (Late Payments), 4.f (Taxes), 5 (Term, Renewal, and Termination), 6 (Confidentiality), 7.b (Disclaimer), 9 (Limitations of Liability), and 10 (General) shall survive the termination of this Agreement.

6. CONFIDENTIALITY

- a. **Definition.** As used herein, "**Confidential Information**" means all confidential information disclosed by or otherwise obtained from a party ("**Disclosing Party**") to or by the other party ("**Receiving Party**"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's "Confidential Information" includes Customer Data; Nudge's
- b. "Confidential Information" includes each Application, all Documentation and the product of all Services and Nudge's financial, security, architectural or similar information; and "Confidential Information" of each party shall include the terms and conditions of this Agreement and each Sales Order and SOW (if applicable), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by or on behalf of such party. However, "Confidential Information" does not include any information that is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, is received from a third party without breach of any obligation owed to the Disclosing Party, or was independently developed by the Receiving Party.
- c. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and limit access to Confidential Information of the Disclosing Party to those of its employees, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, Nudge is also permitted to disclose Confidential Information of Customer on a need to know basis to employees, contractors, and agents of its direct and indirect parents, subsidiaries, and sister entities. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information. The confidentiality and non-disclosure obligations set forth in this Section 6 shall remain in effect for a period of three (3) years from the date of disclosure, notwithstanding earlier termination or expiration of this Agreement, except with respect to trade secret information, which shall remain in effect indefinitely.

7. WARRANTIES AND DISCLAIMER

- a. **Warranties.** Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (b) no authorization or approval from any

third party is required in connection with such party's execution, delivery, or performance of this Agreement. In addition, Nudge warrants that the Application will perform in accordance with Documentation during the Term.

- b. Disclaimer. EXCEPT AS SET FORTH IN SECTION 7.a (WARRANTIES), EACH APPLICATION, ACCESS THERETO, THE DOCUMENTATION AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND NUDGE AND ITS AFFILIATES AND AGENTS (A) DO NOT MAKE, AND HEREBY EXPRESSLY DISCLAIM, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, ACCURACY, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (B) DO NOT WARRANT THAT ACCESS TO ANY APPLICATION WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE OR PROVIDED THROUGH ANY APPLICATION IS ACCURATE, COMPLETE OR FREE OF VIRUSES OR OTHER HARMFUL CONTENTS OR COMPONENTS; (C) SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY INACCURACY, ERROR, OR OMISSION IN, OR LOSS, INJURY OR DAMAGE (INCLUDING LOSS OF DATA) CAUSED IN WHOLE OR IN PART BY, OR FAILURES, DELAYS, OR INTERRUPTIONS OF ANY APPLICATION, DOCUMENTATION, OR SERVICES. NUDGE EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF CUSTOMER'S USE OF ANY APPLICATION, DOCUMENTATION, OR SERVICES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES. IN SUCH JURISDICTIONS, NUDGE'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. NUDGE DOES NOT OFFER MEDICAL ADVICE, DIAGNOSES OR OTHER HEALTH MANAGEMENT SERVICES OR ENGAGE IN THE PRACTICE OF MEDICINE. THE APPLICATION IS NOT INTENDED TO BE, AND DOES NOT CONSTITUTE, A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE BY PHYSICIANS OR LICENSED INDEPENDENT PRACTITIONERS, OR A SUBSTITUTE FOR DIAGNOSIS, TREATMENT OR HEALTH MANAGEMENT AND IS OFFERED FOR INFORMATIONAL PURPOSES ONLY. FURTHERMORE, THE INFORMATION PRODUCED BY THE APPLICATION IS ONLY USEFUL TO THE EXTENT THAT THE INPUT DATA IS ACCURATE. END USERS SHOULD ALWAYS RELY ON THEIR CLINICAL JUDGMENT WHEN MAKING DECISIONS REGARDING PATIENT CARE. AT ALL TIMES, IT IS THE RESPONSIBILITY OF THE USER AND ITS END USERS TO ACCESS, REVIEW AND RESPOND TO ALL RESULTS FROM USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY ALERTS MADE AVAILABLE BY THE SERVICE (COLLECTIVELY, *SERVICE RESULTS*), IN A TIMELY AND CLINICALLY APPROPRIATE MANNER, AND NUDGE WILL HAVE NO LIABILITY TO COMPANY, ANY END USER OR ANY THIRD PARTY FOR ANY FAILURE OF COMPANY, ANY END USER OR ANY OTHER CLINICIAN TO APPROPRIATELY RESPOND TO ANY SERVICE RESULTS.

8. MUTUAL INDEMNIFICATION

- a. Indemnification by Nudge. Nudge shall defend Customer against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Customer by a third party alleging that the use of any Application as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against Customer, and for reasonable attorney's fees incurred by Customer in connection with any such Claim; provided, that Customer promptly gives Nudge written notice of the Claim; gives Nudge sole control of the defense and settlement of the Claim (provided that Nudge may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and provides to Nudge all reasonable assistance, at Nudge's expense.
- b. Exclusions from Obligations. Nudge will have no obligation under this Section 8 for any infringement or misappropriation to the extent that it arises out of or is based upon use of an Application in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination; use of an Application by Customer for purposes not intended or outside the scope of the license granted to Customer; Customer's failure to use an Application in accordance with instructions provided by Nudge, if the infringement or misappropriation would not have occurred but for such failure; or any modification of an Application not made or authorized in writing by Nudge where such infringement or misappropriation would not have occurred absent such modification.
- c. Mitigation of Infringement Action. If Customer's use of any Application is, or in Nudge's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 8.a (Indemnification by Nudge), then Nudge will either: procure the continuing right of Customer to use the Application; replace or modify the Application in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Nudge is unable to do either (i) or (ii), Nudge will terminate Customer's

right with respect to the Application and refund to Customer all unused Subscription Fees prepaid by Customer with respect to such Application.

- d. Limited Remedy. This Section 8 states Nudge's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by any Application.
- e. Indemnification by Customer. Customer shall defend Nudge against any Claim made or brought against Nudge by a third party alleging that Customer Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Nudge for any damages finally awarded against, and for reasonable attorney's fees incurred by, Nudge in connection with any such Claim; provided, that Nudge promptly gives Customer written notice of the Claim; gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release Nudge of all liability); and provides to Customer all reasonable assistance, at Customer's expense.

9. LIMITATIONS OF LIABILITY

- a. Disclaimer of Indirect Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NUDGE DOES NOT HAVE ANY LIABILITY TOWARDS CUSTOMER FOR ANY INDIRECT DAMAGES CAUSED BY INABILITY TO USE ANY APPLICATION, DOCUMENTATION OR SERVICE, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, ACCURACY OF DATA TRANSFERRED TO ANY OTHER SOFTWARE OR SERVICE. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW..
- b. Cap on Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY CUSTOMER HEREUNDER IN THE SIX MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTIONS ENTITLED "PAYMENT AND FEES" AND "TERM, RENEWAL, AND TERMINATION".
- c. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY NUDGE TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY
IN THIS AGREEMENT.

10. GENERAL

- a. Relationship. Nudge will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement.
- b. Assignment and Subcontracting. Neither party may assign performance of this Agreement or any of its rights or delegate any of its duties under this Agreement, including without limitation any change of control involving Customer, without the prior written consent of the other. Notwithstanding the preceding sentence, Nudge may assign this Agreement without the other party's prior written consent in the case of a merger, acquisition or other change of control, or to an affiliate of which such party directly or indirectly owns at least 50% of the voting equity (or other comparable interest for an entity other than a corporation), and in such event this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nudge may subcontract to an Affiliate, or other third party to perform its duties under this Agreement so long as Nudge remains responsible for all of its obligations under this Agreement.

- c. Notices. Except as otherwise provided herein, all notices to the parties shall be sent to the addresses listed on the Sales Order. All notices must be made either via email (to the extent expressly permitted in this Agreement), conventional mail, or overnight courier. Notice sent via conventional mail, using registered mail, is deemed received four business days after mailing. Notice sent via email or overnight courier is deemed received the second day after having been sent. Nudge may broadcast notices or messages through the applicable Application or by posting notices or messages on Nudge’s web site to inform Customer of changes to the Services, or other matters of importance; Nudge shall inform Customer of such broadcast by e-mail. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 10.c.
- d. Reserved.
- e. Force Majeure. Except for payment obligations for Services rendered, neither party shall be liable in damages or have the right to terminate this Agreement or any Sales Order , SOW or other related agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, government restrictions (including the denial or cancellation of any export of other necessary license), wars, insurrections, and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, internet service provider, or communications failure).
- f. Reserved.
- g. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party’s right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.
- h. Severability. Should any term and condition hereof be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement without affecting the legality or enforceability of the remaining portions.
- i. Amendments. Except as expressly stated herein, any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties, and in no case can be modified or supplemented by any other written or oral statements, proposals, service descriptions, or purchase order forms. For clarification purposes, neither Nudge’s acceptance of Customer’s purchase order nor Nudge’s commencement of performance under this Agreement shall constitute acceptance of any terms, conditions, or other provisions contained therein, and Nudge shall have no obligation to honor any additional or conflicting terms unless contained in a written agreement signed by an authorized representative or officer of both parties.
- j. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, a facsimile copy or a “.pdf” image delivered via email of an executed copy of this Agreement will be deemed an original.
- k. Governing Law. This Agreement and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of Delaware.
- l. Entire Agreement. This Agreement and the exhibits or attachments, if any, constitutes the entire agreement between the parties hereto regarding Customer’s use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. Sales Order, as defined in Section 1, shall not include any Customer purchase order submitted to or accepted by Nudge. In the event of conflict or inconsistency among the following documents, the order of precedence shall be: (1) SOW, (2) Sales Order, (3) Sales Order, and (4) the Service Level Agreement, and (5) the Documentation. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. Nudge will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Nudge specifically agrees to such provision in writing and signed by an authorized agent of Nudge.

End of Agreement

Customer: [Recipient.Company]

Nudge Security, Inc.

Signature: _____

Signature: _____

Name: _____

Name: [Nudge.FirstName] [Nudge.LastName]

Title: _____

Title: [Nudge.Title]