Standard Contract

Updated October 13, 2020

This Standard Contract ("Agreement") is between you ("you" or "Customer") and the publisher, Nuventive, LLC ("Publisher" or "Nuventive"), from which you are licensing or subscribing to receive Offerings (defined below). This Agreement governs your use of Nuventive Offerings distributed through Azure Marketplace and/or AppSource Marketplace (collectively, "Marketplace").

This Agreement is the parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalized terms have the meanings given under "Definitions."

This Agreement facilitates a transaction between Publisher and Customer. Both parties acknowledge that Microsoft is not a party to this Agreement, nor in anyway responsible for the parties' actions or obligations under this Agreement. Microsoft's relationship with Customer and Publisher is solely governed by Microsoft's respective agreements with those parties; Microsoft otherwise disclaims all liability resulting from this Agreement (including any Orders).

I. License to Offerings

a. **License grant.** Offerings are licensed and not sold. Upon Microsoft's acceptance of an Order, and subject to Customer's compliance with this Agreement, Publisher grants Customer a nontransferable, nonexclusive and limited right and license, without right of sublicense, to access and use the Offerings made available in the Order attached as Exhibit A, subject to the restrictions set forth in this Agreement and the limitations in Exhibit A and any applicable Documentation. Offerings shall only be used in the form provided by Publisher, and these licenses are solely for Customer's internal use.

b. **Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless terminated earlier under the terms of this Agreement or renewed in accordance with the terms of the applicable Order.

c. **Use of the Documentation.** Subject to the terms and conditions of this Agreement, Publisher grants to Customer during the Term a worldwide, nonexclusive, nontransferable license, without right of sublicense, to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with use of the Offerings.

d. **End Users.** Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with this Agreement. Customer and its End Users are not permitted to share log-in information with any third party. Customer is responsible for all use of the Offerings by its End Users. Customer will immediately notify Publisher if Customer becomes aware of any loss or theft of any log-in information or any unauthorized access to the Offerings.

e. **Reservation of Rights.** Publisher reserves all rights not expressly granted in this Agreement. Offerings are protected by copyright and other intellectual property laws and international treaties. Publisher is the sole owner of the Offerings and all related Intellectual Property Rights, including all right, title and interest in and to Publisher's branding elements and any work product provided to Customer through the Professional Services ("Deliverables"), as specified in an applicable Order (excluding Customer's content and branding elements embedded therein). No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give Customer any right to implement Publisher's patents or other intellectual property in the device itself or in any other software or devices. Customer agrees to retain all proprietary marks, legends and patent and copyright notices that appear on the Offerings, Deliverables, Documentation and Publisher Confidential Information.

f. **Enhancements.** Publisher reserves the right to upgrade, enhance, change or modify any Offering at any time in its sole discretion ("Enhancements"). Enhancements that are generally made available to Nuventive licensees of the same Offerings without charge will be made available to Customer without charge, and will be subject to the terms of this Agreement and any applicable Order and will be deemed part of the applicable Offering. Customer

agrees that its license of any Offering is neither contingent upon the delivery of any Enhancements, future functionality or features nor dependent upon any oral or written public or private comments made by Publisher with respect to Enhancements, future functionality or features.

g. **Return of Customer Data.** Customer, after written request, will have the right for thirty (30) days after the effective date of termination of this Agreement to download Customer Data from Publisher's hosted environment. After such 30-day period, Publisher may, unless legally prohibited, delete all Customer Data in its possession or under its control. It is Customer's responsibility to backup or archive Customer Data in a manner that Customer deems necessary or appropriate.

h. **Limited Rights Granted to Publisher.** Customer grants to Publisher, its employees, contractors, agents and successors and assigns the right to use and share Customer Data: (1) with their Affiliates and other companies and individuals engaged to perform system maintenance and other management or audit functions on their behalf; (2) when reasonably necessary to identify, contact or bring legal action against any person who may injure or interfere with Publisher's rights or property or another person or entity's rights or property; (3) when required by applicable laws or regulations; (4) if the Customer Data is being used or may be used for an unlawful purpose; and (5) in the event Publisher sells its business relating to any Offering, subject to the acquirer being bound by the same terms and conditions with respect to the use, access and disclosure of Customer Data as is contained in this Agreement. The provisions of Publisher's applicable privacy policy(ies) shall apply with respect to Publisher's receipt, storage, use, transfer or disclosure of Customer Data. Customer grants to Publisher a worldwide, nonexclusive, nontransferable (except as provided in Section IX(d) below), limited right and license to use Customer branding elements, content, information or materials as needed to perform the Services and its other obligations under this Agreement, and for no other purpose.

i. **Restrictions.** The Offerings are not specifically developed or licensed for use in any nuclear, aviation, mass transit or medical application or in any other inherently dangerous application. Except as expressly permitted in this Agreement, Documentation or an Order, Customer and its End Users must not (and are not licensed to), without limitation:

(1) attempt to copy, modify, customize, misappropriate, reverse engineer, decompile, or disassemble any Offering, or attempt to derive the source code, source files or structure of any portion of the Offerings;

(2) install or use any software or technology in any way that would subject Publisher's intellectual property or technology to any other license terms;

(3) work around any technical limitations in an Offering or restrictions in Documentation;

(4) transmit anything that contains or embodies any computer virus, malware, harmful component or corrupted data;

(5) allow any third party to access or use an Offering other than as permitted by the Documentation;

(6) adversely affect the performance or availability of Publisher's network;

(7) impair or interfere with the operation of an Offering;

(8) separate and run parts of an Offering on more than one device;

(9) upgrade or downgrade parts of an Offering at different times;

(10) use an Offering for any unlawful purpose;

(11) defame, slander or libel any person, or infringe upon any person's privacy rights;

(12) violate any rights of others including, without limitation, infringement of any Intellectual Property Rights or other proprietary rights;

(13) use an Offering in a manner that is likely to be perceived as obscene or indecent (outside of academic discourse), or that is abusive, threatening or harassing to another person;

(14) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party; or

(15)   act as a service bureau to third parties including, without limitation, by acting as an outsource agent or provider of the Offerings, or by using any Offering for the benefit of any other educational institution or students or faculty not directly affiliated with Customer.

j.   **Responsibility for Customer Data, Equipment and Connectivity.** Customer shall: (1) have sole responsibility for the accuracy and reliability of all Customer Data; (2) obtain all rights it needs to receive, store or use Customer Data; (3) be responsible for reviewing any information or other output the Customer intends to rely on while using any Offering; (4) use commercially reasonable efforts to prevent unauthorized access to the Offerings and notify Publisher promptly of any unauthorized access or use, and assist with any actions Publisher takes to prevent or terminate unauthorized use of the Offerings; and (5) comply with all applicable laws and regulations. Publisher's ability to perform the Professional Services depends on, among other things, Customer providing any technical data, computer facilities, programs, files, documentation, test data, sample output, and such other relevant information, resources, and assistance reasonably required by Publisher for the performance of the Services. All costs of providing Third-Party Software (unless acquired directly from Publisher) and equipment and connectivity necessary for its End Users to access the internet and the Offerings shall be the sole responsibility of Customer or the applicable End Users.

k.   **Feedback.** Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent Intellectual Property Rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential.

l.   **Subcontractors.** Publisher may use Subcontractors to offer products or assist in providing services with or without notice to Customer. These products and services may work in conjunction with the Offerings through an application programming interface or other processes. The terms and conditions of this Agreement, including warranty disclaimers and liability disclaimers, inure to the benefit of such Subcontractors, who are deemed to be third-party beneficiaries of this Agreement. PUBLISHER IS NOT AN AGENT OF ANY SUBCONTRACTOR, AND PUBLISHER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH SUBCONTRACTOR OR ANY PRODUCT OR SERVICE OF ANY SUBCONTRACTOR, whether or not such products or services are designated by Publisher as compatible, "certified," "validated" or otherwise.

II.   *Data Privacy and Security.*

a.   **Personal Data.** All Personal Data to which Publisher has access under this Agreement will remain the property of (or subject to the rights of) the data subject and will be subject to the limitations on use and disclosure set forth in this Agreement. Customer consents to the processing of Personal Data by Publisher and its Affiliates, and their respective agents and Subcontractors, as necessary for Publisher in performance of this Agreement, or as required by law. Before providing Personal Data to Publisher, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable privacy and Data Protection Laws in order to transfer or disclose any Personal Data to third parties or to Publisher, its Affiliates, Subcontractors, agents, successors and/or assigns.

b.   **Data Safeguards.** At Customer's request, Publisher shall provide Customer with the name of any data center(s) used by Publisher or its Subcontractors to host or store Customer Data, including Confidential Information and Personal Data. All Customer Data stored or at rest in any data centers, or in transport, will be encrypted and, unless stated otherwise by Publisher, will not be transferred (except with Customer's prior consent) outside of the United States. Publisher will implement, or cause its Subcontractors to implement, reasonable security standards, but in no event less than industry standards, to protect the security of any data centers, software applications, networks and all data storage systems provided by Publisher or its Subcontractors and used to maintain Customer Data. Publisher agrees to: (1) access and use the Customer Data solely to perform its obligations in this Agreement and as permitted by Nuventive's privacy policy(ies); (2) maintain appropriate physical, technical, and administrative safeguards to protect the Customer Data against unauthorized use; and (3) only disclose Customer Data as legally required or as expressly permitted by this Agreement, Publisher's applicable privacy policy(ies), or other terms made available to Customer and its End Users.

c.   **Data Breach.** If Publisher becomes aware of a security breach that allows any unauthorized person to obtain

access to any Customer Data in Publisher's possession or control, Publisher shall: (1) promptly notify Customer in writing; (2) cooperate with Customer to mitigate such data breach; and (3) comply with applicable law.

III.   *Confidentiality.*

a.   **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data and the terms of this Agreement. Confidential Information of Publisher includes, but is not limited to, the Offerings, Professional Services, Documentation, and the pricing and terms of any Orders. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) must be disclosed under any applicable law.

b.   **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

c.   **Non-Exclusive Equitable Remedy**. Each party agrees that there can be no adequate remedy at law for breach of such party's obligations under this Confidentiality section, and therefore, upon any breach or threatened breach, the non-breaching party will be entitled, in addition to other remedies available, to appropriate equitable relief, without the necessity of posting bond or other security.

d.   **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

e.   **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted by Publisher; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

IV.   *Representation and warranties.*

Customer represents and warrants that it will comply with applicable laws and regulations related to its use of the Offerings, including its use of any Professional Services, and that any Customer Data it provides does not infringe the Intellectual Property Rights or other rights of any person or entity. Publisher continuously represents and warrants that:

a.   it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;

b.   its performance will not violate any agreement or obligation between it and any third party;

c.   the Offerings will substantially conform to the Documentation;

d.   the Services will be performed in a professional and workmanlike manner, in accordance with generally prevailing industry standards;

e.   the Offerings will not:

   (1)   to the best of Publisher's knowledge, infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or

   (2)   contain viruses or other malicious code that will degrade or infect any products, services, software, or Customer's network or systems, and

f.   while performing under this Agreement, Publisher will comply with applicable law, including Data Protection Laws.

Publisher shall not have an obligation under the warranties set forth above if any deficiency is caused by malfunction of hardware or software not provided by Publisher, malfunction of any Subcontractor platform or hosting environment, modification of any Offering not performed or authorized by Publisher, by operator error, or by use of the Offering not in accordance with the Documentation or operating instructions provided by Publisher.

Disclaimer. Except as expressly stated in this Agreement, any Offering, Professional Services or Deliverables are

provided as is. To the maximum extent permitted by law, Publisher and its Subcontractors, Affiliates, subsidiaries, vendors and licensors (collectively, the "Disclaiming Parties") disclaim any and all other warranties (express, implied, statutory or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance. Customer expressly agrees that any use of the Offerings or Professional Services is at Customer's sole risk. Customer agrees the Offerings, including any Professional Services, are not intended to replace Customer's professional skill and judgment.

V.   *Defense of third-party claims.*

a.   **By Customer.** Customer will defend Publisher and its Affiliates from and against any and all third party claims, actions, suits or proceedings arising from or related to Customer's or any authorized End User's violation of this Agreement or user terms ("Claims(s) Against Publisher"), and will indemnify Publisher and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against Publisher or its Affiliates in connection with or as a result of, and for amounts paid by Publisher or its Affiliates under a settlement Customer approves of in connection with a Claim Against Publisher. Publisher must provide Customer with prompt written notice of any Claims Against Publisher and allow Customer the right to assume the exclusive defense and control of the claim, and cooperate with any reasonable requests assisting Customer's defense and settlement of such matter.

b.   **By Publisher.** Publisher will defend Customer from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Offering as permitted under the Agreement infringes or misappropriates a third party's Intellectual Property Rights ("Claim(s) Against Customer"), and will indemnify Customer for all reasonable attorney's fees incurred and damages and other costs finally awarded against Customer in connection with or as a result of, and for amounts paid by Customer under a settlement Publisher approves of in connection with a Claim Against Customer; provided, however, that the Publisher has no liability if a Claim Against Customer arises from: (1) Customer Data or non-Publisher products, including Third-Party Software; (2) Publisher's compliance with any instructions, designs or specifications provided by Customer; or (3) any modification, combination or development of the Offering that is not performed or authorized in writing by Publisher, including in the use of any application programming interface (API). Customer must provide Publisher with prompt written notice of any Claim Against Customer and allow Publisher the right to assume the exclusive defense and control, and cooperate with any reasonable requests assisting Publisher's defense and settlement of such matter. This section states Publisher's sole liability with respect to, and Customer's exclusive remedy against Publisher for, any Claim Against Customer.

c.   Notwithstanding anything contained in the above subsections (a) and (b), (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

VI.   *Limitation of liability.*

For each Offering, including Professional Services, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

a.   **Subscriptions.** For Offerings ordered or Services provided on a subscription basis, Publisher's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offerings during the 12 months before the incident.

b.   **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

c.   **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's: (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's Intellectual Property Rights.

VII. Pricing and payment.

a. **General.** Customer's pricing and payment terms for a given Order are set forth and governed by the Microsoft Services Agreement and applicable Order. Fees paid for any subscription to the Offerings or for other Services are billed in advance based on the Offerings licensed or Services provided and not actual usage. Fees for Professional Services are billed and payable as set forth in the respective Order.

b. **Taxes.** In addition to other payments due under this Agreement, Customer agrees to pay any applicable taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of products or services licensed or purchased under this Agreement, excluding Publisher's income taxes. If Publisher has the legal obligation to pay or collect taxes for which Customer is responsible under this Agreement, such taxes will be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate.

VIII. Term and termination.

a. **Term.** This Agreement is effective until terminated by a party, as described below. The term for each Order will be set forth therein.

b. **Termination without cause.** Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' notice. Any applicable licenses terminated without cause will continue for the duration of the subscription period(s), subject to the terms of this Agreement. Unless a subscription is cancelled within the first 14 days of the applicable subscription period, Publisher will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.

c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement or any Order immediately on notice if: (i) the other party materially breaches the Agreement or an Order, and fails to cure the breach within 30 days after receipt of notice of the breach; or (ii) the other party becomes Insolvent. Upon such termination, the following will apply:

    (1)   All licenses granted under this Agreement will terminate immediately.

    (2)   All amounts due under any unpaid invoices will become due and payable immediately.

    (3)   If Publisher is in breach, Customer will receive a credit for any unused and prepaid subscription fees.

d. **Suspension.** Publisher may suspend use of any Offering or provision of any Services without terminating this Agreement: (1) during any period of material breach; (2) to prevent damages to or interference with Publisher's products, services or network; (3) to comply with applicable laws or regulations; or (4) to protect Publisher from potential legal liability. Publisher will give Customer reasonable notice before suspending the Offering or Services. Suspension will only be to the extent reasonably necessary to satisfactorily cure or resolve a suspension event.

e. **Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

IX. Miscellaneous.

a. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:

    (1)   Order;

    (2)   this Agreement; and

    (3)   Documentation.

b. **Independent contractors.** The parties are independent contractors and neither party shall act as an agent or representative of the other party in performing their respective obligations under this Agreement.

c. **Amendments.** Unless otherwise agreed in a writing signed by both parties, Publisher will not change the terms of this Agreement.

d.   **Assignment.** Neither party may assign this Agreement to an Affiliate, whether by operation of law or otherwise, without the prior written consent of the non-assigning party. Any attempted assignment without required approval will be void. Notwithstanding the foregoing, Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Publisher may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Further, Customer consents to Publisher's assignment of any rights it has under this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of Publisher's assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any permitted assignment shall be subject to an adjustment of subscription fees in circumstances where the assignment causes the subscribing Customer to: (1) exceed the scope of use for the license granted under this Agreement; or (2) increase the number of End Users for the subscribing Customer.

e.   **Force Majeure.** Except for the payment of fees, neither party shall be liable for any failure or delay in performance under this Agreement that is due to any event beyond the reasonable control of such party including, without limitation, fire, explosion, unavailability of utilities or raw materials, internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, civil unrest, act of God, pandemic, export control regulation, laws, judgments or government instructions.

f.   **Severability and Waiver.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect. Failure to enforce any provision of this Agreement will not constitute a waiver.

g.   **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Publisher must be sent to the address stated in the Order. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. Publisher may send notices and other information to Customer by email or other electronic form.

h.   **Applicable law.**

   (1)   **United States and Canada.** If you acquired the Offering in the United States or Canada, the laws of the state or province where you live (or, if a business, where your principal place of business is located) govern the interpretation of these terms, claims for breach of them, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.

   (2)   **Outside the United States and Canada.** If you acquired the Offering in any other country, the laws of England and Wales apply and any dispute, controversy or claim arising out of or relating to this Agreement, the breach thereof, and all other claims (including consumer protection, unfair competition, and tort claims) shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be London and the language of arbitration shall be English. The arbitration shall be held before one arbitrator.

i.   **Government procurement rules.** By accepting this Agreement, Customer represents and warrants that: (1) it has complied and will comply with all applicable government procurement laws and regulations; and (2) this Agreement satisfies all applicable procurement requirements.

j.   **Compliance with laws**. Publisher will comply with all laws and regulations applicable to its provision of the Offerings. Publisher will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). Customer must also comply with laws applicable to their use of the Offerings. Customer acknowledges that the export, import, and use of certain software and technological data provided under this Agreement is regulated and agrees to comply with all applicable laws and regulations, including the U.S. Export Administration Act, the regulations promulgated thereunder, and any other applicable laws or regulations such as those that prohibit the Offerings from being used in or accessed by a national of Cuba, Iran, North Korea, Sudan, Syria or any other sanctioned or embargoed country. If Customer chooses to access or use the Offerings or any website or portal maintained by Publisher from prohibited locations outside the United States, Customer does so on its own initiative and will be solely responsible for compliance with all applicable local use controls,

laws and regulations, including those relating to the transmission of technical data exported from or imported to the United States or the country in which Customer is accessing or using the Offerings or such website or portal. Publisher makes no representations concerning the appropriateness or availability of the content on any website or portal maintained by Publisher when accessed in locations outside the United States.

k. **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. Lists of examples following "including", "*e.g.*", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming favor for either party. Unless stated or context requires otherwise, all monetary amounts are expressed and, if applicable, payable in U.S. dollars.

X. *Definitions.*

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Anti-Corruption Laws" means all laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Publisher or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Offering. Customer Data does not include Support Data. "Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Publisher by or on behalf of Customer (or that Customer authorizes Publisher to obtain from an Offering) through an engagement with Publisher to obtain technical support for the Offering covered under this Agreement.

"Data Protection Law" means any law applicable to Publisher or Customer, relating to data security, data protection and/or privacy.

"Documentation" means all user manuals, handbooks, training material, requirements, specifications and other written or electronic materials Publisher makes available for, or that result from use of, the Offering or any related Professional Services.

"End User" means any person Customer permits to use an Offering or access Customer Data.

"Feedback" means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient's Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., feature lists) for future products.

"Insolvent" means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party's) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

"Intellectual Property Rights" means all rights to any inventions (whether or not protected under patent laws), works of authorship, moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, and all other subject matter protected under intellectual property or other laws.

"Material Defect" means any reported malfunction, error or other defect in an Offering that: (i) can be reproduced by Publisher and Customer; and (ii) constitutes a substantial nonconformity with the Documentation for the Offering.

"Offering(s)" means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that Publisher makes available under or in relation to this Agreement, including the object code version of any software licensed for Customer use through certain hosted application services provided by Publisher and/or Subcontractors, and any related services necessary for Publisher to provide the foregoing. Offering availability may vary by region.

"Order" means an ordering document used for Customer's licensing or purchase of Offerings, Professional Services or other products and services from Publisher via the Marketplace. All Orders shall be deemed incorporated into this Agreement.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Professional Services" or "Services" means certain services provided by Publisher as part of the Offerings under this Agreement, as more fully described in the applicable Order.

"Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.

"Subcontractor" means any third party: (1) to whom Publisher delegates its obligations under this Agreement, including a Publisher Affiliate not contracting directly with Customer through an Order; or (2) who, in performing under a contract between it and Publisher or a Publisher Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under this Agreement) or other Customer Confidential Information.

"Third-Party Software" means non-embedded products and program code delivered by third parties which may interoperate with or be used in connection with the Offerings. Publisher makes no warranties or representations regarding Third-Party Software. Customer may be required to enter into separate agreements with the third parties licensing or providing these products or services, and Customer's use thereof will be subject to such agreements.

"use" means to copy, download, install, run, access, display, use or otherwise interact with.

IN WITNESS WHEREOF, the parties, by their authorized representatives, have executed this Agreement.

Nuventive, LLC   **Customer:**

By:_____   By (Print): _____

Name:_____   Name (Sign): _____

Title:_____   Title: _____

Exhibit A

Offerings:	Nuventive Improvement Platform Premier Edition
	Nuventive Professional Services
Licensee:	
Designated Contact:	

Contract Term: One Year

License Type: Subscription Service License for Software Component

Subscription/Software: Nuventive Improvement Platform Premier Edition

Included with the core Software:

Nuventive Improve Analytics for the Nuventive Improvement Platform Premier Edition – see Improve Analytics Document

Nuventive Connect – LMS – see Connect LMS Document

Implementation Services for Nuventive Improvement Platform Premier Edition (one-time fee) – see Implementation Services

Managed Services will provide ongoing Software Configuration & Support Services for Nuventive Improvement Platform Premier Edition – see Managed Services Document

Monthly Subscription Fee: $

Nuventive Improvement Platform Premier Edition: $

Initial Term Discount: $

Special Terms: This Offering is a subscription to the Nuventive Improvement Platform Premier Edition. Customer will be charged a fixed monthly fee for its subscription to the Offering. Upon the expiration of this initial one-year commitment, the Term of this Agreement shall automatically renew for consecutive one-year terms unless either party provides written notification to the contrary at least ninety (90) days prior to the expiration date of the then current term. The continued availability of the license(s) granted under this Agreement is conditioned on Customer having a fully paid up subscription for the applicable monthly payment period.

SUPPORT AND MAINTENANCE

Upon activation of Customer's subscription, Publisher will provide to Customer certain support and maintenance services for the duration of the subscription. Support and maintenance services include: (a) diagnosis and response to Material Defects via telephone or email; and (b) providing telephone and email support and any qualified personnel needed to aid in the diagnosis and response to Material Defects. Publisher shall provide telephone consultation within two (2) business days of Publisher's receipt of a telephone request during Business Hours (Monday-Friday, 9 a.m.-6 p.m. Eastern Time). For calls received after Business Hours, Publisher shall provide a means whereby requests for consultation can be recorded outside of Business Hours. Unless expressly provided by Publisher, support and maintenance does not include: (a) visits to Customer's site; (b) work with or relating to any third-party equipment or items of software and hardware that Publisher does not provide under this Agreement; (c) configuration, setup or installation; (d) training or consultation with End Users; (e) any other professional services associated with the Offerings that may be covered in a separate service agreement with Publisher or any third party. If Customer requests additional support or maintenance services from Publisher, such support and maintenance may be provided on terms mutually agreed by the parties.

How to Reach Us	
Worldwide Web:	https://www.nuventive.com
Email:	support@nuventive.com
Technical Support:	877-427-4768
Fax:	412-847-0285

Specifications and Requirements: Nuventive Improvement Platform Premier Edition

Nuventive Platform™ Requirements: The Nuventive Platform is 100% cloud-based SaaS (Software as a Service), running completely in Microsoft Azure. No local server, or end user installation required. Licensee shall be responsible for procuring, at its expense, the necessary Microsoft Azure AD account subscription and can work with Nuventive Support to configure the authentication process of users from Azure Active Directory, or an Identity Provider (IDP) that supports SAML2.
Clients may use a Microsoft Windows based operating system or Apple OSX. Clients must be running Google Chrome, Microsoft Edge, Mozilla Firefox, or Safari. Nuventive generally works to be compatible with new versions of these browsers following their release but in advance cannot make any guaranties regarding timing or specific versions.