1. Definitions

In this Agreement, the following definitions will apply:

"Acceptable Use Policy" means the document available on www.nucleus.be/aup, which contains the set of rules that describe how the Customer and each User is allowed to use the Services. The Acceptable Use Policy may be updated from to time by Nucleus in accordance with clause 3.2;

"Additional Deliverables" means any results from the Additional Services (such as, without limitation, reports, custom configurations, blueprints or software);

"**Additional Services**" means those services delivered by Nucleus that are not within the scope of the Setup Services, Hosting Services or Support Services, but may be delivered by Nucleus at the request of the Customer, as described in clause 5;

"**Affiliate**" of a Party means in relation to a Party (i) any entity under the Control of such Party; and (ii) any entity Controlling such Party; and (iii) any other entity under the Control of a Controlling entity under (ii);

"**Agreement**" means, collectively, these Terms and Conditions, the Order Form, the Acceptable Use Policy and all Annexes;

"**Annex**" means any section of the Agreement entitled "Annex";

"Business Hours" means 9:00 a.m. – 6:00 p.m. Monday through Friday, excluding Saturdays, Sundays, and public holidays in Belgium;

"**Confidential Information**" shall have the meaning as set forth in clause 10.1;

"Customer" means the party so identified in the "Customer details" section of the Order Form;

"Customer Software" means any software, data or other content that is not supplied by Nucleus;

"**Control**" (and derivatives of this term) means with regard to an entity, the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract or otherwise;

"**Data Protection Legislation**" means EU Directive 95/46/EC and any national implementations that apply to the Parties' processing of personal data;

"**Effective Date**" means the date this Agreement is signed by both Parties (as evidenced by the dates of signature indicated in the Order Form);

"Error" means a substantial, verifiable and reproducible non-conformity of (i) an Instance with the Service Description; or (ii) the Additional Deliverables with the agreed specifications;

"Force Majeure" means any cause beyond a Party's reasonable control, such as acts of God, acts from authorities, war, fire, flood, explosion or civil commotion, telecom breakdowns (including "denial of service" attacks and similar unavailability of internet connections), strikes, failure of a third party, software bugs in third party software, industrial action, etc.;

"Helpdesk" means the point of contact that Nucleus makes available for answering questions regarding the use of the Instances. The Helpdesk can also be used by the Customer for Error reporting and the follow-up of Error corrections;

"**Hosted Data**" means any electronic data stored in an Instance, after being uploaded by the Customer or a User;

"**Hosting Services**" means the Services described in clause 3;

"Instance" means one online backup account made available through Nucleus' infrastructure and **"Instances"** means, collectively, all online backup accounts hosted for the Customer by Nucleus;

"Instance Software" means, collectively, all software that is installed by Nucleus in an Instance, either because such software is standard software that is pre-installed by Nucleus for each such Instance (e.g., an operating system or application server), or following the explicit request of the Customer;

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malware, malicious code, files, scripts, agents or programs;

"**Nucleus**" means Nucleus BVBA, with company nr 472.322.989 and registered address at North Trade Building, Noorderlaan 133/8, 2030 Antwerp, Belgium;

"Nucleus Software" means any software, data or other content (including documentation) that is supplied by Nucleus to the Customer, or installed by Nucleus in an Instance;

"Nucleus Systems" means the combination of the server hardware, software and network components owned, licensed or leased by Nucleus, which are used by Nucleus to provide the Services to the Customer and/or its other customers;

"Order Form" means the first section of this, Agreement entitled "Order Form";

"**Party**" means either Nucleus or the Customer, while "**Parties**" means both Nucleus and the Customer;

"Qualifying Charges" means the recurring charges that are due by the Customer for a particular Service (excluding any specific

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costs, expenses or one-time charges due by the Customer for such Service);

"**Services**" means, collectively, all services provided by Nucleus to the Customer. The Services consist of the Setup Services, Hosting Services, Support Services and/or Additional Services;

"**Service Description**" means the technical specifications of the Hosting Services, as set out in the Order Form and/or the website of Nucleus;

"**Service Credit**" means the liquidated damages paid by Nucleus for not reaching an agreed Service Level, as further described in the SLA;

"**Service Failure**" means that the delivery of a particular Service is not in accordance with the agreed Service Level(s) for that Service;

"**Service Level**" means the agreed level of quality for a particular Service, as further described in the SLA;

"**Setup Services**" means the services that relate to the initial setup of the Instances, as further described in clause 2;

"**SLA**" means the Service Level Agreement that applies to the Services, which is attached as Annex 1 to this Agreement;

"**Standard Rates**" means Nucleus's standard pricing for all Additional Services delivered by it. The Standard Rates that apply at the Effective Date, are set forth in the Order Form;

"**Support Services**" means the services provided by Nucleus with respect to the Helpdesk, as described in clause 4;

"**Technical Contact Person**" means a staff member of the Customer, or any other person appointed by the Customer to manage the Customer's Instances, as set out in the Order Form;

"**Term**" means the term of this Agreement, as calculated from the Effective Date;

"**Terms and Conditions**" means the present document, entitled "Terms and Conditions for Cloud Services";

"**Unsupported Element**" means any hardware or software, or any specific configuration thereof, that is not customarily installed by Nucleus, or that is in "end of life" or "end of support" status;

"**User**" means any end-user of an Instance.

2.   Setup Services

2.1   The Setup Services comprise the initial setup and installation of the Instances, in order to prepare the delivery of the Hosting Services.

2.2   Subject to Customer's compliance with this Agreement and provided that the Customer promptly delivers all information reasonably requested by Nucleus, Nucleus will prepare and configure the Instances, in accordance with the description set forth in the Services Description.

2.3   Nucleus makes no representation or warranty whatsoever for Unsupported Elements, and the Customer agrees that Nucleus shall not be liable for any loss or damage arising from the provision of the Unsupported Element. Unless otherwise agreed by Nucleus, the SLA shall not apply to the Unsupported Element. The Customer furthermore acknowledges that Unsupported Elements may not interoperate with Nucleus' other services, such as backup or monitoring.

3.   Hosting Services

3.1   The Hosting Services comprise the provision of storage space, computing facilities and related software through a distributed (so-called "cloud computing") model.

3.2   The Customer shall use the Instances, and shall ensure that its Users use the Instances, in accordance with the terms, conditions and limitations set forth in this Agreement and the Acceptable Use Policy. The Customer shall not (and shall ensure that its Users shall not):

-        send spam or otherwise duplicative or unsolicited messages in violation of applicable laws (such as EU Directive 2002/58/EC);

-        send, store or make available obscene, threatening, libelous, harmful or otherwise unlawful material, or material that harms (or may reasonably qualify as harming) third party rights;

-        send or store Malicious Code;

-        interfere with or disrupt the integrity, availability or performance of the Nucleus Systems or third party systems; or

-        attempt to gain unauthorized access to instances of other customers, or related systems or networks of Nucleus.

Nucleus may change the Acceptable Use Policy from time to time to add or modify restrictions on its customers' use of the Services, provided that the changes are reasonable and consistent with hosting industry norms. Any change to the Acceptable Use Policy will be published on the homepage of Nucleus, and will become effective within one (1) month after publication. If Customer can demonstrate that its compliance with the revised Acceptable Use Policy would adversely affect its use of the Hosting Services, Customer may elect to terminate the Agreement on these grounds by giving written notice during the aforementioned period of one (1) month. While Customer will not be charged for such early termination, no fees paid in advance by Customer for the affected Services shall be reimbursed.

3.3   The Customer acknowledges and accepts that it is responsible for the actions and omissions performed by itself and all the Users. The Customer shall ensure that all Users shall be informed of, and shall comply with, the relevant provisions of the Agreement.

3.4   The Customer acknowledges that securing the Instances involves commitments from both Parties. Accordingly, (i) the Customer shall use appropriate security precautions in connection with its use of the Services; (ii) the Customer shall use

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its best efforts to prevent unauthorized access to, or use of, the Instance, and notify Nucleus promptly of any such unauthorized access or use; and (iii) the Customer shall protect the confidentiality of all its usernames, passwords and other access credentials, and shall notify Nucleus promptly if any username or password is lost or would otherwise get exposed.

3.5   Without prejudice to clause 9, Nucleus may suspend the Hosting Services without involvement of a judge and without liability if (i) it reasonably believes that the Hosting Services are being used in breach of the Agreement; (ii) there is an internal or outside attack on one or more of the Instances, or the same are being accessed or manipulated by a third party without Customer's consent; (iii) Nucleus is required by law to suspend the Hosting Services; (iv) Nucleus determines, acting reasonably, that the provision of the Hosting Services to the Customer is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; or (v) there is another event for which Nucleus reasonably believes that the suspension of Hosting Services is necessary to protect the Nucleus Systems or Nucleus' customers.

Nucleus will use commercially reasonable efforts to give the Customer advance notice of such suspension, unless it determines, in its reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Nucleus or its other customers from imminent and significant operational or security risk.

3.6   Without the approval of the Customer, Nucleus shall have the right at any moment to (i) activate a new or improved version of an Instance; (ii) add additional functionality to the Instances; (iii) modify internal or external functioning of the Instances; (iv) relocate the Nucleus Systems to any location within Belgium and (v) upgrade, change or reconfigure the Nucleus Systems as it sees fit; provided such actions do not have a negative impact on the Service delivery.

4.   Support Services

4.1   The Support Services comprise the provision of a helpdesk, through which the Customer can report (and Nucleus shall subsequently aim to resolve) Errors relating to the Hosting Services.

4.2   As part of the Support Services, Nucleus shall make available a Helpdesk to the Technical Contact Person. The Helpdesk shall be available during Business Hours, through the channels indicated on Nucleus' homepage, subject to the limitations (if any) indicated in the Order Form.

4.3   Nucleus shall take all commercial measures within reasonable limits for making the necessary correction of any Error reported through the Helpdesk.

4.4   Nucleus shall only provide the Support Services to the Technical Contact Person, and shall not provide any Support Services directly to your the other Users.

4.5   The correction of Errors will, at Nucleus' sole discretion, consist in the following remedial service: (i) provision of a workaround; (ii) temporary correction (e.g., software patches); (iii)

correction via delivery of a new version of relevant software; or (iv) adaptation of the documentation without reducing the functionality.

4.6   In order to allow Nucleus to carry out its support obligations efficiently and effectively, (i) the Customer shall report any Errors immediately on detection through the Helpdesk, in a well-documented way; and (ii) at Nucleus's request, the Customer shall render assistance, in all fairness, for the diagnosis, the reproduction and correction of the Error.

5.   Additional Services

5.1   Following the Customer's request or following Nucleus' observation that a particular service is not covered by this Agreement, Nucleus may provide the Customer with other, additional services which relate to the Instances ("**Additional Services**").

5.2   The Customer shall provide Nucleus with any complete and accurate information necessary or useful to provide the Additional Services.

5.3   Customer shall cooperate with Nucleus in the performance of the Additional Services, *inter alia* by providing Nucleus with timely access to data, information and assistance. Customer acknowledges and agrees that Nucleus' performance is dependent upon the timely and effective satisfaction of Customer's responsibilities under this Agreement and timely decisions and approvals of Customer in connection with the Additional Services.

5.4   The Customer expressly agrees that Nucleus is not obliged to deliver any Additional Services, and that the delivery of the Additional Services is subject to prior written acceptance of both Parties, and may also be subject to other or additional terms and conditions than the terms and conditions of this Agreement.

6.   Services in general

6.1   Any changes to the Services that are requested by the Customer, shall be considered Additional Services, and may give rise to separate charges.

6.2   The Customer warrants that the Services shall be used in accordance with all applicable local, regional, federal, national and international legislation and, in general, in a responsible manner, exclusively for admissible purposes and without breach of the rights of third parties.

6.3   Unless explicitly agreed otherwise in writing by the Parties, any deadlines and timeframes for delivery of Services shall be considered as indicative, and shall not bind Nucleus.

6.4   Any offers made by Nucleus for the Services shall remain valid throughout a period of thirty (30) days as from their submission to the Customer.

6.5   The Customer shall obtain, and shall maintain for the duration of this Agreement, all the consents, licenses and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the supply of the Services by Nucleus, or to enable the Customer to use the Instances or the Additional Deliverables.

6.6 The Customer warrants and accepts that any order for Services or change to the Services that is approved by a Technical Contact Person, shall bind the Customer.

6.7 The Customer agrees to indemnify and hold harmless Nucleus and its Affiliates against any and all damage, loss, costs, expenses, third party claims or demands (including claims of Users) arising out of the use by the Customer, its employees, its designees and/or the Users of the Instance, the Additional Deliverables or the Nucleus Systems in a manner that does not correspond with this Agreement or, in general, all applicable laws, decrees and other legal instrument.

7. Warranties

7.1 Nucleus warrants that:

- it will perform the Services in a good and workmanlike manner;

- the Instances and the Instance Software shall function substantially in accordance with the Service Description, it being understood that small deviations shall not constitute a breach of this warranty, and that all software contains bugs; and

- it shall use reasonable efforts to maximize the availability of the Instances, as further described in the SLA. The Customer recognizes, however, that the use of the Instances shall not be entirely error-free, completely secure or without any interruptions, and that the availability and security of the Instances is subject to a variety of interdependent factors (such as the availability of telecommunication links, the interaction between software of various parties, network congestion on the Internet, etc.), which are partially or substantially out of the control of Nucleus.

7.2 If the Instance does not perform as warranted, Nucleus shall undertake to correct the Errors. However, Nucleus does not warrant that the Services will meet the Customer's specific expectations, objectives or requirements. .

7.3 Nucleus's warranties do not cover interventions not due to Nucleus such as, but not limited to:

- Errors resulting from erroneous, improper, non-authorized or unsupported use of the Instances or the Additional Deliverables;

- Errors resulting from a fault of the Customer, the Technical Contact Person or a User;

- Errors resulting from the interfacing of the Instances or the Instance Software with other software from third parties, unless approved in writing by Nucleus.

7.4 This clause 7 constitutes Nucleus' only warranty concerning the Services and is made expressly in lieu of all other warranties. Except as otherwise provided in this Agreement, and to the fullest extent permissible under applicable law, Nucleus makes

no warranties, express or implied, regarding any matter, including fitness for a particular purpose, merchantability and/or non infringement. Nucleus specifically disclaims all warranties and liability for: (i) the technical operation of the Customer's own applications; and (ii) the accuracy, lawfulness and appropriateness of any Hosted Data.

8. Fees

8.1 The Customer shall pay to Nucleus the fees indicated in the Order Form. Unless otherwise indicated in the Order Form: (i) all payment obligations are non-cancelable; (ii) fees paid are non-refundable; and (iii) payments are to be made in advance.

8.2 Unless if otherwise agreed, the Additional Services shall be charged at the Standard Rates. The Standard Rates shall be subject to change from time to time by reference to increased cost of production, commercialization, promotion, etc. Nucleus will provide the Customer with thirty (30) days' written notice prior to the effective date of the new Standard Rates.

8.3 Subject to the Customer's consent, any expenses incurred by Nucleus that are not explicitly described as being included in the charges (such as out-of-pocket expenses or shipment costs, etc.) shall be invoiced to and paid separately by the Customer.

8.4 Except as otherwise provided, all fees are quoted and payable in EUR, and do not include any sales, use, excise, import or export, value added or similar tax (collectively "taxes").

8.5 Unless otherwise agreed in the Order Form, all invoices are payable thirty (30) days, calculated as from the invoice date. In case of late payment, a monthly interest of 1% will be charged automatically and without prior notice.

8.6 In the event of any failure of the Customer to timely make the payments indicated above, then Nucleus:

- can demand that all outstanding invoices become due at once;

- can suspend the provision of any Service, until all outstanding invoices have been paid;

without in any way affecting its other rights under this Agreement.

8.7 Complaints concerning invoices must be submitted within eight (8) days upon receipt of the invoice. After this eight day period, the invoice will be deemed accepted.

8.8 The charges for the Hosting Services can be reviewed annually by Nucleus three month prior to the anniversary of this Agreement, based on the following formula:

$Vn = Vo (A + B * So/Sn)$

whereby

A = 0.0 (if the Customer is established outside Belgium) or 0.2 (if the Customer is established in Belgium)

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B = 1.0 (if the Customer is established outside Belgium) or 0.8 (if the Customer is established in Belgium)

Vn = the new daily rate

Vo = the current daily rate

So = the index of the national wage costs (*referteloonkost landsgemiddelde*) as published by Agoria three months before the previous indexation

Sn = the index of the national wage costs (*referteloonkost landsgemiddelde*) as published by Agoria three months before the anniversary of this Agreement.

9.   Term and termination

9.1   Unless otherwise indicated in the Order Form, this Agreement comes into force on the Effective Date, with an initial period of twelve (12) months.

9.2   Unless otherwise indicated in the Order Form, this Agreement shall be tacitly renewed each year by a period of one (1) year, except if one of the Parties terminates this Agreement by registered letter with a notice period of three (3) months before the expiry of the then current period.

Each Party can terminate this Agreement with immediate effect without intervention of a judge by written notice to the other Party, if the other Party commits a material breach of this Agreement, and — in the case of a breach capable of remedy — fails to substantially remedy it within one (1) month of receipt of a written notice from the Party not in default specifying the breach and containing a warning of an intention to terminate if the breach is not remedied within the one (1) month grace period. A breach of clause 3.1 or a breach of the Acceptable Use Policy shall always be considered a material breach of this Agreement.

9.3   Each Party may terminate this Agreement without intervention of a judge with immediate effect on written notice:

-        if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;

-        if the other Party makes any arrangement for the benefit of its creditors; or

-        if the other Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction.

9.4   After termination of this Agreement:

-        each Party shall return or destroy (or provide a certificate of having destroyed) the other Party's Confidential Information;

-        unless explicitly agreed otherwise in the Order Form, any IP addresses assigned to the Customer shall be promptly released;

-        the Customer shall remove all copies of all software provided or owned by Nucleus from the Customer's systems (if any); and

-        Nucleus shall have the right to remove the Hosted Data.

9.5   Termination shall not relieve the Customer of the obligation to pay any fees accrued or payable to Nucleus prior to the effective date of termination.

10.   Confidentiality

10.1   "Confidential Information" means all confidential information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**") 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. Confidential Information shall include: the terms and conditions of this Agreement (including pricing and other terms reflected in the Order Form), business and marketing plans, technology and technical information, product designs and business processes, as well as the Hosted Data. Confidential Information shall not include: (i) information that is, or becomes, generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) information known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) information developed independently by the Receiving Party without breach of any obligation owed to the Disclosing Party; and (iv) information received from a third party without breach of any obligation owed to the Disclosing Party.

10.2   The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

10.3   Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).

10.4   If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

11.   Protection of Hosted Data

11.1   Nucleus undertakes reasonable industry standard efforts to maintain appropriate administrative, physical, and technical safeguards to protect the Hosted Data against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure and unauthorized access.

11.2   Unless backup services for the Hosted Data are explicitly included in the Service Description, the Customer shall bear sole responsibility for the backup of any such data. The Customer also acknowledges that Nucleus's responsibility set out in clause 11.1 does not extend to any of the Customer's data that is hosted outside the Instances. Accordingly, the Customer shall bear sole responsibility for the adequate security, protection and backup of any such data.

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11.3 The Customer accepts that (i) Nucleus qualifies as a "hosting provider", as defined by article 14 of the EU E-commerce Directive (2000/31/EC); (ii) Nucleus does not have the obligation to monitor or get knowledge of the Hosted Data; (iii) Nucleus has the right (but not the obligation) to remove at any moment and without prior warning any Hosting Data which, in Nucleus's reasonable opinion, is illegal or infringes (or is likely to infringe) upon the rights of third parties; (iv) Nucleus has the right to remove at any moment and without prior warning any Hosting Data at the request of competent authorities.

11.4 In relation to the processing of any "personal data" contained in the Hosted Data, under the Customer Workflow, the Customer shall be the "data controller" and Nucleus shall be the "data processor", as defined in Data Protection Legislation. Accordingly, Nucleus shall only process such personal data (i) in accordance with the instructions received from the Customer, which may be specific instructions or instructions of a general nature as set forth in this Agreement: (ii) to the extent, and in such manner, as is necessary for the provision of the Services, or as is required by law or any regulatory body.

12. Risk allocation

12.1 Nucleus's total aggregate contractual and extra-contractual liability under this Agreement shall be limited to the greater of: (i) the total amount paid by the Customer in the six (6) months preceding the claim; or (ii) 5.000 EUR. Nucleus shall in no event be liable for any indirect or consequential damage or losses of any kind (such as, without limitation, loss of profits, loss of use, loss of customers, damage to reputation, business interruption, loss of data, third party claims, etc.), regardless of the form of action (contractual or extra-contractual) or otherwise, even if it has been advised of the possibilities of such damage.

12.2 Nothing in this Agreement shall exclude or limit either party's liability for fraud or willful misconduct.

13. Intellectual Property Rights

13.1 Unless if otherwise communicated to the Customer (e.g., in the Order Form, the Service Description, or during a software installation procedure), the Customer: (i) may not copy any Nucleus Software; (ii) may not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any Nucleus Software; (iii) may not reverse engineer, decompile or disassemble any Nucleus Software, except and to the extent that Customer is expressly permitted by applicable law to do so; (iv) will accept any third party license terms applicable to the Nucleus Software.

13.2 The Customer acknowledges that, unless explicitly indicated otherwise, Nucleus is not the vendor or developer of any Nucleus Software, and that Nucleus is dependent on the license rights and/or support services accorded by third party software vendors or other third parties. Accordingly, the Customer accepts that, unless if otherwise specified by the applicable third party license terms, (i) such Nucleus Software is provided on an "as is" basis, to be used at the Customer's own risk; (ii) Nucleus makes no warranties, express or implied, with respect to such Nucleus

Software, and specifically disclaims any and all implied warranties, including functionality, operation, fitness for a particular purpose, title or noninfringement of third party rights.

13.3 With respect to the Customer Software, the Customer represents and warrants that it has the legal right to use the software in the Instances. On Nucleus' request, the Customer will certify in writing that it is in compliance with this clause 13.3.

13.4 If Nucleus has agreed to install, patch or otherwise manage Customer Software, then Customer represents and warrants that it has a written license agreement with the software vendor that permits Nucleus to perform these activities. On Nucleus' request, the Customer will certify in writing that it is in compliance with this clause 13.4.

13.5 The Customer shall hold harmless and defend Nucleus against any claim lodged against Nucleus on the basis that the Customer Software or the Hosted Data infringe any third party intellectual property rights or other third party rights. Nucleus undertakes that the Customer shall be given prompt notice of any alleged infringement claim that is made against Nucleus. The Customer shall have the right to defend any such claims and make settlements thereof at its own discretion, and Nucleus shall give such assistance as Nucleus may reasonably require to settle or oppose such claims.

13.6 Other than the licenses expressly set forth in this Agreement, either Party reserves all right, title and interest (including all intellectual property and proprietary rights) for its own materials.

14. Miscellaneous

14.1 **Force Majeure** – Neither Party shall be liable to the other for any delay in, or failure of, the performance of its obligations under this Agreement arising from Force Majeure. The Party affected by Force Majeure shall as soon as practicable send to the other a written notice setting out the circumstances of the event and its anticipated effect, and shall use all reasonable endeavors to minimize the effect of any such circumstances. If any delay or stoppage arising out of an event of Force Majeure continues for a continuous period of one (1) month, either Party may terminate this Agreement with immediate effect on giving written notice to the other, and neither Party shall be liable to the other for such termination.

14.2 **Waiver** – A failure or delay of any Party to enforce at any time any of the provisions hereof, or the failure to exercise any right which is provided therein or to require at any time performance of any of the provisions thereto, shall in no way be construed to be a waiver of such provisions of this Agreement by such Party in the event of a continuation or repetition of the circumstances which gave rise to such right.

14.3 **Enforceability** – Should any clause of this Agreement be found to be invalid or unenforceable, such clause (or part thereof) shall be deemed severed from this Agreement, and the other clauses thereof shall remain in full force and effect, as if this Agreement had been executed without the offending clause appearing. In such a case, the Parties shall negotiate in good faith and on a commercially all reasonable efforts basis to agree

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alternative or amended valid, legal and enforceable clauses with the same economic effect as intended by the parties hereto.

14.4   **Assignment** – This Agreement is personal to the Customer and neither this Agreement nor any of the Customer's rights or obligations hereunder shall be assigned, sublicensed, sold or otherwise transferred by the Customer without the prior written consent of Nucleus. Nucleus reserves the right to assign all or part of this Agreement at any time to any Affiliate that can sufficiently execute the obligations under this Agreement, subject to providing the Customer a written notice of such assignment.

14.5   **Relationship of the Parties** – The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship.

14.6   **References** – During the Term and a period of three (3) years after the Term, Nucleus may use the Customer's name and logo on its website and in press releases, brochures, financial reports and other promotional materials in any media indicating that Customer is or was a customer of Nucleus.

14.7   **Log files** – The Customer accepts the server log files of the Instances as legal proof of all transactions, visits and access requests with respect to the Instances.

14.8   **Survival** – The clauses of this Agreement that by their nature may reasonably be presumed to survive any termination or expiration of this Agreement (in particular, without limitation, clauses 6.3, 6.6, 6.8 and 12.1), shall survive any termination or expiration hereof.

14.9   **Hierarchy** – In the event of any conflict or ambiguity between the clauses of the Order Form, these Terms and Conditions and the Annexes, the clauses of the Order Form shall prevail, provided they explicitly refer to the clauses of the Terms and Conditions or Annexes that are being replaced or amended. In the event of any conflict or ambiguity between the clauses of these Terms and Conditions and the Annexes, the clauses of these Terms and Conditions shall prevail.

14.10   **Governing law** – This Agreement and all respective rights and obligations of the Parties shall be governed by and shall be construed in accordance with the laws of Belgium (excluding its conflicts of laws rules). The Antwerp courts shall have exclusive jurisdiction to settle any such dispute, controversy or claim which may arise in connection with this Agreement.

Annex 1: Service Level Agreement for Online Backup

1. Service Levels and Service Credits in general

1.1 During the term of the Agreement, Nucleus shall use all commercially reasonable efforts to ensure that the Services are provided in accordance with the Service Levels set forth in this SLA.

1.2 In the event Nucleus does not provide the Services in accordance with the applicable Service Levels ("**Service Failure**"), Customer will be eligible to receive credits ("**Service Credits**").

1.3 To properly claim a Service Credit due, the Customer must inform Nucleus within five (5) days of the purported Service Failure and provide a full description of the Instance interruption, including logs if applicable.

1.4 Credits will not apply if: (i) the Service Failure is caused by Force Majeure; (ii) the Service Failure results from any actions or inactions of the Customer or any third parties for which Nucleus cannot be held responsible; (iii) the Service Failure is caused by programming errors in Customer Software; (iv) the Service Failure is not reported within five (5) days; (v) the Service Failure results from scheduled maintenance; or (vi) Customer violates the Agreement.

1.5 In case (i) multiple Service Failures are triggered by the same event; or (ii) Service Credits are simultaneously due with respect to the same Instance, only the Service Credit with the highest amount shall apply.

1.6 Unless if otherwise specified in this SLA, Service Levels and Service Credits are calculated per month.

1.7 Unless if otherwise specified in this SLA, Service Levels that are expressed as availability percentages, shall be calculated as follows:

$$A / (T-S) * 100$$

whereby

A = the actual availability, as measured by Nucleus (expressed in minutes per month)

T = the total number of minutes in the month considered

S = the total amount of scheduled downtime, if any (expressed in minutes per month)

1.8 Unless if otherwise specified in this SLA, Service Credits for Service Levels that are expressed as availability percentages, shall be calculated as follows:

$$(L - P) * Q$$

whereby

L = the agreed percentage of availability

P = the actual percentage of availability, calculated in accordance with clause 1.7 of this SLA (or any other applicable formula)

Q = the Qualifying Charges for the affected Service

1.9 The maximum total amount of Service Credits for any calendar month (for all Instances and for all Services rendered under the Agreement) shall not exceed 50% of the Qualifying Charges for the affected Service.

1.10 The Service Credits awarded to the Customer reflect the Customer's sole and exclusive remedy and qualify as liquidated damages.

2. Availability of the Instances

2.1 **Definitions** – For the purposes of this Service Level, "available" means that an Instance can be accessed by the Customer, or does not fail to respond to user requests, including providing the encrypted data in order to restore previous successful backups.

2.2 **Scheduled downtime** – Any downtime due to maintenance on the instances or underlying infrastructure, which is reported at least 24h in advance.

2.3 **Service Level** – Each Instance shall be available for 99.9% per month.

2.4 **Service Credits** – The Service Credits shall be calculated in accordance with clause 1.8 of this SLA.

2.5 **Other provisions** – The Service Level and Service Credits shall apply to each Instance separately, and the Qualifying Charges shall be calculated per Instance.

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