

NUVENTIV PROPRIETARY LIMITED'S (HEREINAFTER REFERRED TO AS "SUPPLIER")

CUSTOMER TERMS AND CONDITIONS OF SERVICE FOR PRODUCTIV 365

(EFFECTIVE DATE: 20 OCTOBER 2023)

YOUR CONTINUED USE OF THE WEBSITE AND OUR SERVICES INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS AND CONDITIONS AND ALL TERMS AND CONDITIONS OR POLICIES INCORPORATED HEREUNDER BY REFERENCE (I.E THAT ALSO FORM PART OF THESE) ("T&Cs").

Preamble

- A. This Agreement describes the Subscription Services that Supplier will provide to Customer, how the Parties will interact, and other aspects of the business relationship between Supplier and Customer.

- B. The Supplier will not provide the Subscription Service to Customer unless Customer has agreed to the terms and conditions of this Agreement. By using the Subscription Service, Customer accepts and agrees to be bound by this Agreement.

- C. The Supplier will and reserves the right to periodically update the terms and conditions of this Agreement as provided in Section 15(b) below. Customer will be notified of any material updates or changes via email or through Productiv 365.

1. Definitions.

- a. "**Agreement**" means this Agreement and includes all policies, annexures and materials referred to or incorporated herein by reference read with the Proposal executed between the Parties.
- b. "**Billing Period**" means the period for which Customer agrees to prepay Fees under a Proposal, which will be the same as or shorter than the Subscription Term. For example, if Customer subscribes to the Subscription Service for a three (3) year Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.
- c. "**Confidential Information**" means all confidential or proprietary information disclosed orally or in writing by one Party (the "Discloser") to the other (the "Receiver") that is identified at the time of disclosure as confidential. Confidential Information includes, without limitation, Customer Data, any information about the Discloser's business plans or technical data, and the terms of the Proposal. Except when contradictory to applicable privacy laws and regulations, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser, (ii) was known to the Receiver before receipt from the Discloser, or (iii) is lawfully disclosed to the Receiver by a third party without

restriction on disclosure or any breach of confidence. The Supplier's Confidential Information includes, without limitation and regardless of whether it has been identified as confidential, (a) any content provided to Customer in connection with the Subscription Service, and (b) any materials or content provided to Customer as part of the implementation services or any other services provided by Supplier.

- d. **"Content Specific Terms"** means the additional content-related terms that apply to Customer's subscription to or use of Third-Party Content, as set forth in the Proposal.
- e. **"Customer Content"** means all data, text, messages, information, survey responses, images, audio and video clips, works of authorship and other content that is created or originally provided by Customer and/or Users and submitted, uploaded, posted, or displayed on or via the Subscription Service. Customer Content will not include any content prepared or created by or for Supplier or that is originally provided to Customer by Supplier.
- f. **"Customer Data"** means all data, Personal Information, text, reports, or other information Customer submits to, or Supplier collects via the Subscription Service in order to, among other things, create and manage User accounts, track User actions within the Subscription Services, or otherwise deliver the Subscription Service.
- g. **"De-Identified Usage Data"** means the de-identified data and metadata that Supplier collects and stores relating to each customer's use of the Subscription Services, including, without limitation, platform and content usage statistics, diagnostic data, telemetry data, and/or Third-Party software usage data (i.e., Microsoft 365, etc.). De-identified Usage Data does not contain any personally identifiable information about Users, the identity of Customer, Customer Data or Customer Content.
- h. **"Derivatives"** of any subject matter shall mean and include, without limitation, all derivatives, enhancements, extensions, improvements, modifications, new products and the like, that to any extent incorporate or are based on or related to any portion of that subject matter.
- i. **"Documentation"** means the documents made available by Supplier to Customer which set out the user instructions for the Subscription Services.
- j. **"Fees"** means the amount Customer agrees to pay for the Subscription Service and any other services that Supplier may provide, as evidenced by the Proposal.
- k. **"Parties"** Parties means the Customer and the Supplier, as the parties to this Agreement, and **"Party"** means any one of them as the context may require.
- l. **"Personal Information"** means "personal information" as defined in accordance with POPIA and other any other applicable data laws, as amended or updated from time to time.
- m. **"POPIA"** means the Protection of Personal Information Act, No 4 of 2013 including any related regulations and guidance and codes of practice issued by the Information Regulator or relevant supervisory authority from time to time.
- n. **"Productiv 365 Add-Ons"** means the individual platform features provided by Supplier, as identified and set forth in the Proposal.
- o. **"Productiv 365 Content"** means the individual Packs or Bundles (as identified in the Productiv 365 Platform) of articles, PDF's, video content, email templates, tests, surveys and other supporting components provided by Supplier to Customer via the Website, as identified and set forth in the Proposal.

- p. **“Productiv 365 Material”** means all data, text, information, images, audio and video clips, works of authorship and other content that is created by or for Productiv 365 and provided to Customer via the Subscription Service or otherwise.
- q. **“Productiv 365 Platform”** means the online, cloud-based software application(s) that are provided by Supplier to Customer via the Website (as defined below).
- r. **“Productiv 365 Support”** means the specific customer support services set forth in Section 5(c) and, if any, the Proposal.
- s. **“Proposal”** means each proposal executed on Suppliers standard Proposal document and signed by Customer (which shall include any annexures or attachments thereto), setting out the specific details and commercial terms of the Subscription Services to be provided by Supplier to the Customer under the terms of this Agreement.
- t. **“Subscription Service”** (also referred to collectively as **“Productiv 365”**) means the Productiv 365 Platform, Productiv 365 Content, Productiv 365 Material, Productiv 365 Add-ons and/or any Third-Party Content (as defined below) that are provided to Customer via the Website, including any ancillary products or services, including web-hosting, that Supplier will provide to Customer.
- u. **“Subscription Term”** means the Initial Term (as defined below) of Customer’s subscription (or access) to the Subscription Service, as specified in the Proposal, and any subsequent Renewal Term (as defined below), during which Customer agrees to pay (or prepay) the Fees under a Proposal.
- v. **“Third-Party Content”** means the individual Packs or Bundles (as identified in the Productiv 365 Platform) of articles, PDF’s, video content, email templates, tests, surveys, and other supporting components provided or sold by third parties to Customer via the Website, as identified and set forth in the Proposal.
- w. **“Third-Party Data”** means the data and metadata that Third-Party Providers collect regarding each customer’s use of the Third-Party Content, including, without limitation, content usage statistics, diagnostic data, telemetry data, and/or software usage data of that third party.
- x. **“Third-Party Providers”** means third-party content vendors who sell or make Third-Party Content freely available and/or collect Third-Party Data via the Productiv 365 Platform.
- y. **“Usage Data”** means the data and metadata that Supplier collects and stores for each customer’s use of the Subscription Services, including, without limitation, platform and content usage statistics, diagnostic data, telemetry data, and/or third-party software usage data (i.e., Microsoft 365, etc.).
- z. **“Users”** means individuals who are authorised by Customer to access and use the Subscription Service and who have been supplied user identifications and login credentials by Customer (or by Supplier at Customer’s request). Users may include employees, consultants, contractors, and agents of Customer.
- aa. **“Website”** means the following websites where Customer and its Users will access and use the Subscription Service: productiv365.com; learn.productiv365.com, and any other URLs from which Supplier will provide the Subscription Service, in whole or in part.

2. The Subscription Service.

- a. **Access.** Subject to the terms and conditions of this Agreement and the applicable Proposal, and upon Customer's payment of the applicable Fees, Supplier will provide Customer and its Users with access to the Subscription Service via the Website during the Subscription Term. Customer understands and agrees that its purchase of a subscription to the Subscription Service is not contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Supplier regarding future functionality or features.
- b. **Additional Purchases.** Access to additional Productiv 365 Content, Productiv 365 Add-ons, or Third-Party Content not set forth in the original Proposals will require a separate purchase(s) and the execution of a separate Proposal/s, and may in addition to this Agreement and to the extent applicable be governed by separate or additional terms and conditions, such as Content Specific Terms.
- c. **Maximum Authorised Users.** The Subscription Service may not be accessed or used by more than the maximum number of Users, as set forth in the Proposal. User accounts cannot be shared or used by more than one User. Customer may, however, reassign a former User's account to a new User. The maximum number of Users cannot be decreased during the Subscription Term. If, at the end of any year of the Subscription Term, the actual number of Users exceeds the maximum number of Users listed in the Proposal by ten percent (10%) or more, then Supplier will increase the Fees to account for such additional Users on a pro rata basis for the remainder of the Subscription Term. For this to happen, Supplier will complete a review of active Users between ninety (90) and sixty (60) days before the end of each year. The Supplier will not count Users deleted, removed, or reassigned, unless the Users are temporarily removed to avoid a fee increase.
- d. **In-Product Marketing.** Customer consents to Supplier sending those Users who Customer designates in the Subscription Service as "admins" or "group owners" in-product marketing communications and Productiv 365 Platform-generated messages in order to notify the Customer about related offers from Supplier.
- e. **Content Specific Terms.** Customer also acknowledges that a purchase of Productiv 365 Content or Third-Party Content may require the acceptance of Content Specific Terms.

3. Fees and Payment.

- a. **Subscription Fees.** Customer will pay the Fees as set forth in the Proposal(s). The Fees will remain fixed during the Subscription Term unless (i) Customer exceeds the maximum Users (see Section 2.(c)), (ii) Customer purchases additional subscriptions or access to the Subscription Service, such as additional Productiv 365 Content, (iii) the Fees are increased pursuant to Section 3.(b), or (iv) Customer and Supplier mutually agree in writing to modify or amend the Proposal(s). All payment obligations hereunder are non-cancellable, and the Fees paid are non-refundable and non-cancellable unless specifically provided otherwise in this Agreement.
- b. **Fee Increases at Renewal.** Prior to each Renewal Term, Supplier may increase the Fees to the then-current rate for the Subscription Service. The Supplier will

endeavour to provide notice of any Fee increase at least 60 (sixty) days prior to the renewal date. If the Customer fails to respond to the Renewal Notice within 30 (thirty) days of receipt thereof, the Subscription Service will automatically be renewed for the renewal period as set out in the Term on the same terms and conditions as set out herein. The Initial Period and any Renewal Period thereafter shall constitute the “Term”.

- c. **Invoices.** The Supplier will invoice Customer in accordance with the terms of the relevant Proposal (generally at the beginning of each Billing Period). Unless the Proposal states differently, all amounts invoiced are due and payable in advance and within thirty (30) days from the date of invoice.
- d. **Late Fees.** If Supplier does not receive payment of the invoiced Fees on the appropriate due date, then the Fees will accrue late interest at the rate of one and a half percent (1.5%) of the outstanding Fees per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- e. **Suspension of the Subscription Service.** The Supplier will provide Customer with notice of non-payment of any amount due. Without prejudice to any other rights Supplier may have, if the Customer fails to make payment of Fees by the due date for payment, then Supplier shall be entitled to suspend Customer’s access to the Subscription Service (or any portion thereof) until such amounts are paid in full, including any interest due. In addition, Supplier may also suspend Customer’s access to any portion or all of the Subscription Service if:
 - (i) The Supplier reasonably determines that: (A) Customer’s or any User’s use of the Subscription Service disrupts or poses a security risk to Supplier or to any other customer or Third-Party Provider of Productiv 365/Supplier; (B) Customer, or any User, is using the Subscription Service in breach of this Agreement or in violation of applicable law; (C) Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganisation, liquidation, dissolution, or similar proceeding; or (D) The Supplier's provision of the Subscription Service to Customer is or becomes prohibited by applicable law; or (ii) any Third-Party Provider has suspended or terminated Supplier's access to or use of any Third-Party Data, Third-Party Content or any other services or products required to enable Supplier to provide or Customer to access and use the Subscription Service. The Supplier shall use commercially reasonable efforts to provide written notice of any service suspension under this Section 3(e) (a “**Service Suspension**”) to Customer and to provide updates regarding resumption of access to the Subscription Service following any Service Suspension. The Supplier shall use commercially reasonable efforts to resume providing access to the Subscription Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. The Supplier will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service Suspension.
- f. **Payment Disputes.** The Supplier will not exercise its right to charge interest under Section 3(d) (Late Fees), or its right to suspend Customer’s access to the Subscription Service under Section 3(e) (Suspension of the Subscription Service), if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

- g. **Taxes.** Customer agrees to pay all applicable taxes levied by any tax authority on the Subscription Service or on Customer's use thereof, which may be separately invoiced, excluding any and all taxes based on the net income of Supplier.

4. Term and Termination.

- a. **Term and Renewal.** Customer's initial Subscription Term will be as specified in Customer's Proposal (the "Term").
- b. **No Early Termination; No Refunds.** The Subscription Term cannot be cancelled early and, unless renewed as provided in Section 4(a) above, will end on the expiration date established in the Proposal. The Supplier will not provide refunds if Customer decides to stop using the Subscription Service during Customer's Subscription Term.
- c. **Termination for Cause.** Either Party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately if the other Party commits an act of insolvency or otherwise become bankrupt or insolvent, or allows a judgment to be entered against it, or is provisionally or finally liquidated or sequestered, or becomes subject to business rescue, administration or similar proceedings. (iii) The Supplier may also terminate this Agreement for cause on thirty (30) days' notice if, upon Supplier's reasonable belief, Supplier determines that Customer is acting, or has acted, in a way that has or may negatively reflect on or affect Supplier, its prospects, or its customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.
- d. **Effects of Termination.** If Customer terminates this Agreement for cause, Supplier will refund any prepaid Fees covering the unused portion of the Subscription Term. If Supplier terminates this Agreement for cause, without limiting any other available remedies, Customer will pay any unpaid fees covering the remainder of the Subscription Term after the effective date of termination. In no event will any termination relieve Customer of its obligation to pay any Fees payable to Supplier for the period prior to the effective date of termination. In addition, upon any expiration or termination of this Agreement, all rights, licenses, consents and authorisations granted by Supplier to Customer hereunder will immediately terminate, and Customer shall immediately cease all use of the Subscription Service.
- e. **Survival.** Sections 1, 4(d), and 5-15 and any other terms in this Agreement which by their nature must survive after the Subscription Term to give their intended effect will survive any termination or expiration of this Agreement.

5. Updates, Changes, and Support.

- a. **Updates and Maintenance.** The Supplier will support, maintain, upgrade, and update the Subscription Service as appropriate and in Supplier's sole determination in order to fulfil its obligations under this Agreement. Except as provided elsewhere in this Section 5 or as specifically agreed in a Proposal, Supplier shall have no other maintenance or support obligations to Customer.
- b. **Changes.** The Supplier reserves the right to, but not the obligation to, change, remove, edit, modify, block or deprecate Productiv 365 Content or certain

features or functionality of the Productiv 365 Platform, in its sole discretion, at any time, without notice to Customer and for any reason or no reason at all.

- c. **Support.** In addition to the ongoing customer service support that Supplier will provide as described in Section 5(a), Supplier will provide technical support to Customer during the Subscription Term during normal South Africa business hours of 8:00 a.m. - 5:00 p.m. SAST, Monday through Friday, excluding holidays. Support is limited to the designated admins within the Subscription Service and is generally not available to Customer's Users. Customer's point of contact may reach the support helpdesk at help@productiv365.com.

6. Customer Responsibilities and Restrictions.

Customer agrees that:

- a. It and its Users will comply with the terms and conditions of this Agreement, as well as any applicable laws and regulations. Customer will promptly notify Supplier of any suspected or alleged violation of this Agreement by its Users and will cooperate with Supplier in its efforts to (a) investigate any alleged or suspected violation of this Agreement and (b) enforce this Agreement.
- b. It will be responsible for its and its Users' use of the Subscription Service, including, without limitation, any use of the Subscription Service that is in violation of applicable laws, regulations, and/or Supplier's Privacy Policy. Customer shall have sole responsibility for the accuracy, quality, and legality of all Customer Data.
- c. It will not (a) access or use the Subscription Service except as expressly permitted by this Agreement, (b) make the Subscription Service available to anyone other than Customer's Users, (c) attempt to copy, modify, duplicate, sell, resell, distribute, rent, lease, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Productiv 365 and/or Documentation (as applicable) in any form or media or by any means, except as may be authorised in writing by Supplier, (d) interfere with or disrupt the integrity or performance of the Subscription Service or any of its content, (e) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to gain unauthorised access to the Subscription Service's underlying systems or networks, (f) access or use the Subscription Service for purposes of competitive analysis of the Subscription Service, the development, provision or use of a competing software service or product or any other purpose that is to Supplier's detriment or commercial disadvantage, or (g) introduce or permit the introduction of, any virus or malware into Productiv 365.
- d. It will not access and use the Subscription Service if Customer is a direct competitor or is affiliated with a direct competitor of Supplier.
- e. It will comply with all applicable laws in respect of the procurement and use Subscription Service.
- f. It will not use the Subscription Service to collect, manage or process special personal information(as defined under POPIA), and will not provide any such special personal information to Supplier via the Subscription Service. The Supplier will not have any liability that may result from customer's use of the Subscription Service to collect or manage such special personal information. Customer acknowledges that the subscription service was not designed or intended to process or manage such special personal information.

- g. The Subscription Service constitutes the proprietary information and trade secrets of Supplier or its licensors, and/or suppliers, whether or not any portion thereof is or may be the subject of a valid copyright, trademark or patent.
- h. The Supplier may disclose Customer's name, whether in written or oral form, in a factual listing of Supplier's Customers to be published within marketing and promotional materials, in presentations, on tradeshow signs and materials, on Supplier's external website and/or to financial and industry analysts.

7. Data and Content

- a. **Privacy Policy.** Customer acknowledges that Supplier will process Customer Data as described in Supplier's Privacy Policy, located at www.productiv365.com – and that such is expressly incorporated under this Agreement.
- b. **Safeguards.** The Supplier will maintain commercially appropriate administrative, physical, and technical safeguards to protect Customer Data. Customer consents to the processing of Customer Data in the South Africa.
- c. **Ownership of Customer Data.** As between the Parties, Customer owns and retains all rights to Customer Data. The Supplier will use Customer Data only in order to provide the Subscription Service to Customer and only as permitted by applicable law, this Agreement, and The Supplier's Privacy Policy.
- d. **Productiv 365 License to Customer Data.** By importing or processing Customer Data in the Subscription Service, Customer hereby grants Supplier a worldwide, non-exclusive, royalty-free, license to reproduce, distribute, modify, and adapt Customer Data for the purpose of providing the Subscription Service and otherwise performing under this Agreement, including the right to disclose Customer Data to Supplier's sub-processors as necessary to provide the Subscription Service. The Supplier will only use, display, disclose or transfer Customer Data to the extent that such is legally permitted.
- e. **De-identified Usage Data.** As between the Parties, Supplier solely and exclusively owns all rights to any De-Identified Usage Data and, therefore, reserves the right, in its discretion, to use and/or aggregate any De-Identified Usage Data collected by Supplier for any purpose, including, without limitation, to (i) test, maintain, improve, and/or otherwise provide the Subscription Services, or (ii) produce, share, and/or sell the De-Identified Usage Data to Third Parties.
- f. **Sharing Data with Third Parties.** Without derogating from any applicable laws, Customer hereby consents to Supplier's aggregation and sharing of Customer Data and/or Customer's Usage Data with Third-Party Providers from whom Customer has purchased Third-Party Content, or through whom Customer has received access to the Services. Notwithstanding any provisions to the contrary, Customer hereby grants Supplier and any such Third-Party Provider with an irrevocable, non-exclusive, royalty-free, fully paid up, perpetual, worldwide right and license, with the right to sublicense, use, reproduce, publish, distribute, perform, aggregate, anonymize, and display, both during and after the Term, Customer Data and/or Customer's Usage Data that is derived from Customer's or its Users' use of the Subscription Service; provided, however, that Supplier and/or the Third-Party Provider will only use the Customer Data and/or Usage Data in accordance with any applicable laws

(without limitation, data privacy laws) and for the purpose of providing the Subscription Service.

- g. **Data Protection.** The Customer warrants that all Personal Information which may be shared with Supplier pursuant to this Agreement has been obtained and is being shared in accordance with applicable laws, including but not limited to POPIA, and the Customer hereby consents to the processing of such Personal Information by Supplier for the purposes enabling Supplier to perform its obligations under this Agreement. The Supplier warrants that it shall only use and process such Personal Information for the purposes enabling Supplier to perform its obligations under this Agreement and in accordance with applicable laws, including but not limited to POPIA. Each Party shall secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisation measures to prevent (a) loss of damage to or unauthorised destruction of such Personal Information; and (b) unlawful access to or processing of such personal information.

- h. **Customer Content**

- i. **Ownership of Customer Content.** By providing Customer Content to Supplier via the Productiv 365 Platform, Customer represents and warrants that Customer or its licensors own or control all rights in and to the Customer Content and that Customer has the right to grant the licenses granted below to Supplier. As between the Parties, Customer owns all right, title, and interest in and to the Customer Content submitted to, uploaded to, or created in the Productiv 365 Platform, including all intellectual property and proprietary rights therein. Except as set forth herein, Supplier acquires no right, title, or interest from Customer in or to Customer Content. Customer Content shall be considered “Confidential Information” and shall be subject to the confidentiality restrictions contained in the Agreement.
- ii. **Content Submission.** The Productiv 365 Platform provides Customer the ability to post, upload, submit, publish, display, or transmit Customer Content on or through the Productiv 365 Platform, which can be displayed to and used by Customer and its Users. Customer is responsible for any Customer Content submitted or contributed to the Productiv 365 Platform by any of its Users, and Customer is fully responsible for such content and Customer’s and Users’ use of such content, including without limitation its legality, reliability, accuracy, and appropriateness. The Supplier is not responsible or liable for the content or accuracy of any Customer Content posted by Customer or any of its Users. Customer agrees not to upload any Customer Content to the Subscription Service that (i) violates any applicable local, or international law or regulation (including, without limitation, any laws regarding the export or transfer of data or software to and from South Africa or other countries), including but not limited to, copyright and trademark laws and data privacy laws, (ii) does not comply with the Content Standards, (iii) introduces any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful, or attempts to gain unauthorised access to any parts of the

Cloud Service, or (iv) otherwise interferes with the proper working of the Subscription Service.

- iii. **Productiv 365 License to Customer Content.** Solely for the purpose of, and only to the extent necessary for Supplier to perform its obligations under the Agreement, Customer hereby grants to Supplier a worldwide, assignable, sublicensable, royalty-free, revocable license during the Term to display, perform, reproduce, distribute, transmit, broadcast, create Derivatives of, provide User access to, and otherwise use the Customer Content and any Derivatives
- iv. **Customer Content Standards.** All Customer Content must comply with the following standards (the “Content Standards”): Customer Content must not (i) contain any material that is defamatory, abusive, harassing, violent, hateful, inflammatory, or otherwise objectionable, (ii) promote or contain any sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, (iii) infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person, (iv) violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this Agreement, (v) be likely to deceive any person or impersonate any person, or misrepresent Customer’s or any User’s identity or affiliation with any person or organisation, (vi) promote any illegal activity, or advocate, promote, or assist any unlawful act, (vii) involve commercial activities, advertising or sales, such as contests, sweepstakes and other sales promotions, or (viii) give the impression that the Customer Content emanates from or is endorsed by Supplier or any other person or entity.
- v. **Violations.** Violations of this Section 7(h) may, in Supplier’s sole discretion, result in the suspension of Customer’s access to the Subscription Service or termination of the applicable Proposal or the Agreement entirely.

8. The Supplier’s Proprietary Rights.

- a. **Reservation of Rights.** This is an Agreement for access to and use of the Subscription Service, and Customer is not granted a license to any software by this Agreement, or any other intellectual property right, other than the limited rights and licenses specified in this Agreement. The Subscription Service, and its associated code, content, etc., is protected by intellectual property laws and, as between the Parties, belongs to and is the property of Supplier and its licensors (if any), and Supplier and its licensors retain all ownership rights therein.
- b. **Intellectual Property.** The Customer acknowledges and agrees that Supplier and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Software or the Documentation. The Supplier confirms that it has all the rights in relation to the Software and

the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

- c. **Suggestions.** The Supplier encourages all customers to provide comments, feedback, and suggestions to improve, correct, change, or modify the Subscription Service or its operation (“**Suggestions**”). Customer agrees that all such Suggestions will be non-confidential and that Supplier will own all rights to use and incorporate such Suggestions into the Subscription Service, without payment or attribution to Customer. Any Suggestions incorporated into the Subscription Service shall not contain any Customer Data.

9. Confidentiality.

Each Party (as a Receiver) agrees to hold the other’s (as a Discloser) Confidential Information in confidence, and not to use or disclose such Confidential Information other than in connection with the performance of its obligations hereunder. Notwithstanding the foregoing, either Party may disclose any of the other Party’s Confidential Information to its employees, subcontractors, advisers, and/or agents that have a need to know such Confidential Information in connection with such Party’s performance under this Agreement and that have agreed to be bound by confidentiality obligations similar to those in this Section. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any local law, statute, rule or regulation, subpoena or legal process.

10. Indemnification.

- a. **Indemnification.** Each Party (each, an “**Indemnifying Party**”) agrees to defend the other Party (each, an “**Indemnified Party**”) from and against any claims, demands, suits, or proceedings (each, a “**Claim**”) made or brought by a third party against the Indemnified Party (i) arising from the Indemnifying Party’s breach of this Agreement or its contravention of the law or (ii) without derogating from the aforementioned alleging that material provided by the Indemnifying Party (the Productiv 365 Platform and Productiv 365 Content, in the case of The Supplier as the Indemnifying Party, and Customer Data, in the case of Customer as the Indemnifying Party) infringes or misappropriates the intellectual property rights of a third party or arising out of a failure by Customer to comply with Sections 6 and 7(h), which indemnification included but shall not be limited to the Indemnifying Party agreeing to indemnify the Indemnified Party from any damages finally awarded by a court of competent jurisdiction against the Indemnified Party or amounts agreed to in settlement in connection with any such Claim. The Indemnifying Party’s obligations under this paragraph will only apply to the extent that: (a) the Indemnified Party promptly notifies the Indemnifying Party in writing of the Claim, provided that failure to give or delay in giving such notice to the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party demonstrates that the defence of such action is materially prejudiced thereby; (b) the Indemnifying Party has control of the defence and all related settlement negotiations relating to the Claim, provided, however, the settlement of any Claim will not be made without advance written permission of the Indemnified Party, which will not be unreasonably withheld; and (c) the

Indemnified Party provides the Indemnifying Party with the assistance, information and authority reasonably necessary to perform the above. In no event will Supplier have any obligation or liability under this paragraph for any Claim or action under any legal theory to the extent that the Claim or action is caused by, or results from: (i) Customer's combination, operation or use of the Subscription Service with software or other materials not supplied by Supplier, (ii) any alteration or modification of the Subscription Service by Customer, (iii) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (iv) the actions or omissions of any person or entity other than Supplier, or (v) Customer's failure to comply with Section 7(h).

- b. **Remedy for Infringement.** Should Customer's right to use the Subscription Service pursuant to this Agreement be subject to a Claim of infringement or if Supplier reasonably believes such a Claim of infringement may arise, Supplier may, at its option and in its sole discretion, (i) procure for Customer the right to continue to access and use the Subscription Service; (ii) modify the Subscription Service to render it non-infringing but substantially functionally equivalent to the Subscription Service prior to such modification; or (iii) if the alternatives described in clauses (i) and (ii) of this paragraph are not commercially practicable, then Supplier may terminate this Agreement and refund to Customer any amounts prepaid by Customer for the Subscription Service for the unused portion of the Subscription Term.

11. Warranties.

- a. **The Supplier Warranties.** The Supplier only warrants that the Productiv 365 Platform and Productiv 365 Content will be provided materially in accordance with The Supplier's published documentation for the Productiv 365 Platform and Productiv 365 Content, as found on the Website. For any breach of such warranty, Customer's exclusive remedy will be as provided in the "Termination for Cause" and "Effects of Termination" sections above. The Supplier will have no liability under this section if the Subscription Service has been modified or altered by anyone other than Supplier, or if the Subscription Service has been abused or misapplied.
- b. **Customer Warranties.** When Customer shares Customer Data with Supplier or uploads Customer Data to the Subscription Service, Customer represents and warrants that it is the creator and owner of, or that Customer has the necessary licenses, rights, consents, and permissions to use and to authorise Supplier to use and distribute the Customer Data as necessary for Supplier and its licensors to provide Customer with access to and use of the Subscription Service and to otherwise perform its obligations under this Agreement.
- c. **Disclaimer.** Except as expressly provided herein, the Subscription Service is provided on an "as is" basis without warranty of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including, without limitation, any implied warranties of merchantability, non-infringement, and fitness for a particular purpose, to the maximum extent permitted by applicable law. The Supplier does not warrant that the Subscription Service will satisfy customer's requirements or (without prejudice to the limited warranty above) that it is without defect or error or that customer's access thereto will be uninterrupted.

12. Limitation Of Liability.

In no event will either party have any liability to the other for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages, however caused, whether in contract, tort or under any other theory of liability, and whether or not such party has been advised of the possibility of such damages. The Supplier's cumulative liability for damages under this agreement for any cause whatsoever, and regardless of the form of the action, will be limited to no greater than the amount of money paid to Supplier for the Subscription Service during the twelve (12) month period immediately preceding the incident. The foregoing will not limit customer's obligation to pay Fees under this agreement and the proposal. Customer acknowledges that the amount of fees payable by customer to Supplier hereunder reflects the allocation of risk set forth in this Agreement and that Supplier would not have entered into this Agreement without the limitations on its liability contained in this section. These liability limitations apply even if contractual remedies fail of their essential purpose.

13. Third-Party Content.

- a. **Liability.** The Supplier disclaims all liability with respect to Third-Party Content available on Productiv 365. The Supplier's licensors will have no liability of any kind under this agreement. All Third-Party Content available on the Productiv 365 Platform is the property of its respective owners. The Supplier does not claim ownership, copyright, or any other rights over the Third-Party Content. Users acknowledge and agree that they will not assert any claim, whether based on copyright, trademark, or other intellectual property rights, against Supplier with respect to such Third-Party Content.
- b. **Control.** The availability, modification, and removal of Third-Party Content are at the sole discretion of its respective owners. The Supplier has no control over, and assumes no responsibility for, the content, privacy policies, practices, or actions of any third parties. Users acknowledge that Third-Party Content may be modified, removed, or made unavailable without notice, and The Supplier shall not be liable for any such changes.
- c. **As-Is.** Third-Party Content is provided on an "as-is" basis. The Supplier makes no representations or warranties of any kind, express or implied, as to the accuracy, completeness, or authenticity of the content provided by third parties. Users access and use such content solely at their own risk.
- d. **Free.** Any third-party content provided free to use by the third party is provided on Productiv 365 at no charge to the customer. Should any third party elect to institute fees or charges for their content, or revoke the rights to access such content for free, Supplier reserves the right to pass on any such costs to its Customers. In such an event, users will be duly notified and will have the option to accept such charges or cease using the affected Third-Party Content.

14. Governing Law; Submission To Jurisdiction And Venue.

- a. **Disputes.** (i) Should any dispute arise between the Parties concerning the Agreement or any issue arising therefrom, the Parties shall attempt to resolve the dispute by negotiation, whereby one Party invites the other in writing to

meet to attempt to resolve the dispute within 10 (ten) days from date of the written invitation. (ii) Failing such a resolution, and if the dispute is arbitrable in law, either Party shall have the right to require that the dispute be referred to arbitration and that Party shall notify the other Party in writing of such requirement. Arbitration shall be held in Cape Town. (iii) The dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by one Arbitrator appointed by said Foundation. The decision resulting from arbitration shall be final and binding on the Parties and may be made an order of any court of competent jurisdiction. (iv) The provisions of this clause shall not preclude any Party from access to an appropriate Court of Law for interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of arbitration. The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa for such purposes.

- b. **Governing Law.** This Agreement and any and all claims arising under this agreement will be governed by the laws of the Republic of South Africa, excluding its principles of conflict or choice of laws. In the event that a Party who engages the services of legal counsel to enforce the terms and conditions hereof against the other is successful in doing so, such Party will be entitled to the reimbursement by the other Party of all reasonable attorneys' fees and court costs incurred by the successful Party.

15. Miscellaneous.

- a. **Entire Agreement.** This Agreement, each Proposal, and Supplier's Privacy Policy together constitute the entire agreement between the Parties for the provision of and access to the Subscription Service, and supersede all other proposals and agreements, whether electronic, oral or written, between the Parties. The Supplier objects to and rejects any additional or different terms proposed by Customer, including those contained on Customer's purchase order, acceptance, or website.
- b. **Amendment; No Waiver.** The Supplier may update and change any part or all of this Agreement, including the fees and charges associated with the use of the Subscription Service (but Customer's Fees and charges will not change during the Subscription Term except as explained in the Fees section above). If Supplier makes a material update or change to these terms and conditions, Supplier will provide notice via email and/or in-app notification. The updated Agreement will become effective and binding on the effective date indicated at the top of the updated Agreement. If Customer does not agree with a modification to this Agreement, Customer must notify Supplier in writing within thirty (30) days after receiving notice of the modification. If Customer gives this notice, Customer's subscription will continue to be governed by the terms and conditions of this Agreement prior to modification for the remainder of Customer's current Subscription Term. Upon renewal, the updated Agreement, as published on Supplier's website, will apply. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

- c. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.
- d. **Assignment.** Customer may not assign, sublicense, or transfer this Agreement, Customer's access to the Subscription Service, any right to maintenance and/or support, or any rights or obligations hereunder without prior written consent of Supplier. Any such purported assignment, sublicense, or transfer will be null and void. The Supplier may terminate this Agreement in the event of any such attempted assignment, sublicense, or transfer by providing Customer with written notice. The Supplier may cede or assign the Agreement to any of its affiliates without prior written consent of the Customer.
- e. **Authority.** Each Party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such Party and enforceable in accordance with its terms.
- f. **No Third-Party Beneficiaries.** Unless otherwise specifically agreed to in the Proposal or any Content Specific Terms, Customer agrees that there will be no third-party beneficiaries to this Agreement.
- g. **Precedence.** In the event of a conflict between the terms of this Agreement and a Proposal, the terms of the Proposal will control, but only as to that Proposal.
- h. **Force Majeure.** Neither Party will be responsible for failure or delay of performance if caused by an act of war, hostility, or sabotage; act of God; electrical, Internet, or telecommunication outage that is not caused by the obligated Party; government restrictions; or other events outside the reasonable control of the obligated Party. Each Party will use reasonable efforts to mitigate the effect of a force majeure event.
- i. **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- j. **Notice.** Notice will be sent to the contact address set forth herein and will be deemed delivered as of the date of actual receipt.
 - i. If to Supplier: Nuventiv (Pty) Ltd, Trumali House, Trumali Street, Stellenbosch, South Africa, 7600, Attn: Legal Department
 - ii. To Customer: Customer's address set forth in the Proposal.
 - iii. The Supplier may give electronic notices by general notice via the Productiv 365 Platform to the designated admin accounts, via email to Customer's e-mail address(es) on record with Supplier, or as otherwise agreed. Customer must keep all of its account contact information current.
- k. **Audit.** Customer will permit Supplier or its agents, at Supplier's expense, to conduct audits to verify Customer's compliance with this Agreement. Such audits will be conducted during normal business hours and after reasonable advance notice from Supplier to Customer.
- l. **Waiver.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by such Party of any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement or failure to perform by the other Party will not operate or be construed as a further or continuing waiver of such breach or failure to perform

or as a waiver of any other or subsequent breach or failure to perform. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable law.