NIMBAL END USER LICENCE AGREEMENT

This End User Licence Agreement (the "EULA") sets forth the terms and conditions applicable to the licensing of Product from Nimbal Limited (NZCN 7688996) ("**Nimbal**") by the Party subscribing to the Product ("**Buyer**") through the AWS Marketplace Listing. The offer of the Product Listing on the AWS Marketplace, and Buyer's purchase of the corresponding Subscription on the AWS Marketplace, constitutes each Party's respective acceptance of this EULA. Unless defined elsewhere in this EULA, terms in initial capital letters have the meanings set forth in Section 10. Buyer and Nimbal may be referred to collectively as the "**Parties**" or individually as a "**Party**".

1.   Scope.

1.1   **Agreement.** Each Subscription is subject to and governed by this EULA, the applicable Listing, and any amendments to the foregoing as may be agreed by the Parties, which together constitute the agreement between Nimbal and Buyer. Each Subscription is a separate agreement between Buyer and Nimbal. In the event of any conflict between the terms and conditions of the various components of this Agreement, the following order of precedence will apply: (a) any amendment agreed upon by the parties; (b) this EULA; and (c) the Listing.

1.2   **Product Subscription.** Buyer will subscribe to a Subscription as set forth in the Listing in accordance with this Agreement. Nimbal will supply and sell the Subscription to Buyer, or Buyer may purchase the Subscription from Nimbal's authorised reseller ("**Reseller**"). Product may be targeted for specific geographic regions, and Support Services may vary by geography as set forth in the applicable Listing. A Subscription may be provided on a Metered Pricing, Entitlement Pricing or other basis through the functionality available through AWS Services. The fee or rate for the Subscription is set forth in the applicable Listing. For Subscriptions provided on a Metered Pricing basis, upon request by Buyer, Nimbal will provide sufficient documentation from its books and records to allow Buyer to verify the metered usage charged to Buyer for the Subscription.

1.3   **Taxes.** Each Party will be responsible, as required under applicable Law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments under this Agreement. Applicable taxes and duties may be due in addition to the fees or rates payable by Buyer. Nimbal may charge and Buyer will pay, where applicable, national, state or local sales or use taxes, or value added or goods and services tax, or withholding or other taxes ("**Taxes**"). Where required by local legislation, Amazon Web Services, Inc. may charge for Taxes in its own name for Subscriptions made by Buyers on the AWS Marketplace, and Buyer will pay such Taxes. Buyer will receive a compliant tax invoice, where required. Upon request, Buyer will provide such information to Nimbal as reasonably required to determine whether Nimbal is obligated to collect Taxes from Buyer. Nimbal will not collect (or will refund to Buyer), and Buyer will not be obligated to pay (or will be entitled to a refund from Nimbal), any such Tax or duty for which Buyer furnishes Nimbal a properly completed exemption certificate or a direct payment permit certificate or for which Nimbal claims an available exemption from Tax. Nimbal will provide Buyer with any forms, documents or certifications as may be required for Buyer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement.

2.   Licences

2.1   **Product Licence.** Nimbal grants to Buyer a nonexclusive, worldwide, and nontransferable licence to deploy, operate and use the Product, AMI Image and Documentation solely for the Buyer's own internal purposes

under Buyer's own AWS Services account on AWS Services infrastructure in accordance with the applicable Listing and to allow its Users to access and use the Product as so deployed.

2.2 **Affiliates and Contractors.** With respect to Affiliates and Contractors that Buyer allows to use the Licensed Materials: (a) Buyer remains responsible for all obligations hereunder arising in connection with such Affiliate's or Contractor's use of the Licensed Materials; and (b) Buyer agrees to be directly liable for any act or omission by such Affiliate or Contractor to the same degree as if the act or omission were performed by Buyer such that a breach by an Affiliate or a Contractor of the provisions of this Agreement will be deemed to be a breach by Buyer. The performance of any act or omission under this Agreement by an Affiliate or a Contractor for, by or through Buyer will be deemed the act or omission of Buyer.

2.3 **Restrictions.** Except as specifically provided in or permitted by the terms of this Agreement, Buyer and any other User of any Licensed Materials, in whole or in part, may not: (a) copy the Licensed Materials, in whole or in part; distribute copies of Licensed Materials, in whole or in part, to any third party; (b) modify, adapt, translate, make alterations to or make derivative works based on Licensed Materials or any part thereof; (c) except as permitted by Law, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Product; (d) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to any part of the Licensed Materials to third parties; (e) use the Licensed Materials to act as a consultant, service bureau or application service provider; or (f) permit access of any kind to the Licensed Materials to any third party.

2.4 **Open Source Software.**

(a) The Buyer acknowledges that Product contains or is provided with third party components that are subject to the terms and conditions of "open source" software licences ("**Open Source Software**"). A list of Open Source Software and applicable licence can be found in the Documentation or Listing.

(b) Notwithstanding anything to the contrary stated in this Agreement, to the extent required by the licence to which the Open Source Software is subject: (a) the terms of such licence will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including without limitation, any provisions governing attribution, access to source code, modification and reverse-engineering, and disclaimers; and (b) nothing in this Agreement limits the Buyer's rights under or grants rights to the Buyer that supersede the terms of any applicable Open Source Software licensee; (c) if Nimbal is required to make an offer to provide source code in for the Open Source Software, and Nimbal has not already made such source code available to the Buyer, such offer is hereby made. Any request to fulfil such offer should be directed only to nimbal@nzde.zendesk.com. For the avoidance of doubt, to the extent the Buyer and its Users downloads and installs Open Source Software on its own systems or AWS Services account or infrastructure to use in conjunction with the Product, the use of such Open Source Software shall be governed by the terms of the licence to which the Open Source Software is subject.

(c) Nimbal shall ensure that the Product, when used in conformance with this Agreement, does not include Open Source Software that restricts the Buyer's ability to use the Product nor requires the Buyer to disclose, license, or make available at no charge any material proprietary source code that embodies any of the Buyer or its Affiliate's intellectual property rights.

2.5 **High-Risk Activities.** The Product is not designed or developed for use in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the

failure of the Product could lead to severe physical or environmental damages ("High-Risk Activities"). Buyer will not use the Product for High-Risk Activities.

2.6 **Acceptable Use.** Buyer will not used the Product to: (a) engage in phishing, spamming, denial of services attacks, or other fraudulent or criminal activity; (b) interfere with or disrupt the integrity, availability or performance of Nimbal's or any third party system or network; or (c) otherwise attempt to gain unauthorised access to the Product or Nimbal's or any third party's systems or networks. Buyer will also review Nimbal's Security Model (which is included in the Documentation and can be supplied on request) and comply with its recommended security controls.

3. Services.

3.1 **Support Services.** Nimbal will provide sufficient Documentation to allow a reasonably competent user to access and use the Product, and Nimbal will provide Support Services to the Buyer in accordance with the support description set out in the Listing. Nimbal shall perform the Support Services in a professional manner with a level of care, skill and diligence performed by experienced and knowledgeable professionals in the performance of similar services.

3.2 **Limitations on Support.** Nimbal will have no obligation to provide Support Services or may cease providing the Support Services in the case of or with respect to any incident that is in whole or in part due to, caused by, or resulting from any of the following:

(a)   a breach by the Buyer of this Agreement;

(b)   the operational characteristics of the AWS provided hardware, instances, or infrastructure;

(c)   any third party products, software, hardware, equipment, content, data or information, including Open Source Software and any modifications, improvements, updates, new versions or new releases thereto or thereof, not provided by Nimbal;

(d)   use of Product after Nimbal has notified you to cease use thereof under this Agreement;

(e)   the Buyer's failure to provide or give Nimbal access to Buyer Data and Buyer Materials required to provide Support Services; and

(f)   your negligence, abuse, misapplication, or misuse of the Product or the Support Services. Nimbal will have no liability for any changes required by your hardware or software configuration which may be necessary to use Product due to a workaround, error correction, or maintenance release.

3.3 **Buyer Data and Materials**. Nimbal may request access to Buyer Data or Buyer Materials deployed on AWS in order to provide Support Services. Nimbal does not otherwise have access to Buyer Data or Buyer Materials. Where the Buyer chooses to give Nimbal access to, or provide to Nimbal, Buyer Data or Buyer Materials for the purposes of obtaining Support Services, the Buyer grants to Nimbal all rights and licences in Buyer Data, under all Proprietary Rights, as may be necessary for Nimbal to provide Support Services under this Agreement. Buyer will, at its expense, indemnify, defend and hold harmless Nimbal and its respective officers, directors, employees, agents and representatives from and against any and all claims, actions, proceedings and suits brought by a third party, and any and all liabilities, losses, damages, settlements, penalties, fines, costs and expenses (including reasonable lawyers' fees) (**"Claims"**) to the extent arising out of or relating to an allegation of any of the following: (a) infringement, misappropriation or violation of any Proprietary Rights by the Buyer Materials or Buyer Data or Nimbal's use thereof as permitted under this

Agreement; and (b) any unauthorised or unlawful receipt, processing, transmission or storage of Buyer Data by Licensor in the performance of its obligations as permitted under this Agreement.

4. Proprietary Rights.

4.1 **Licensed Materials.** Subject to the licenses granted under this Agreement and the rights owned by licensors of Open Source Software set out in Section 2.4, Nimbal will retain all right, title and interest it may have in and to the Licensed Materials, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to Buyer any rights of ownership or any other proprietary rights in or to the Licensed Materials.

4.2 **Feedback.** If Buyer provides any suggestions, ideas, enhancement requests, recommendations or feedback regarding the Licensed Materials or Support Services ("**Feedback**"), Nimbal may use and incorporate Feedback in Nimbal's products and services. Buyer will have no obligation to provide Feedback, and all Feedback is provided by Buyer "as is" and without warranty of any kind.

5. Warranties.

5.1 **General.** Each Party represents and warrants that it will comply with all applicable international, national, state and local laws, ordinances, rules, regulations and orders, as amended from time to time ("**Laws**") applicable to such Party in its performance under this Agreement.

5.2 **Power and Authority.** Each Party represents and warrants that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement have been duly authorised; and (b) this Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party.

5.3 **Support Services**. Nimbal will perform all Support Services as stated under this Agreement subject to the limitations in Section 3.2. If Nimbal fails to comply with the previous sentence, Nimbal will, at its sole discretion and as your sole remedy and Nimbal's sole obligation for any such failure: (a) re-perform the relevant Support Services in a manner that resolves the alleged failure; or (b) refund any fees (if any) paid by you attributable to the Support Services that are the subject of the failure.

5.4 **Disclaimer.** WHILE NIMBAL SHALL MAKE COMMERCIALLY REASONABLE EFFORTS TO ENSURE THAT THE PRODUCT IS UP-TO-DATE WITH CURRENT BUG FIXES AND PATCHES, DUE TO THE NATURE OF THE PRODUCT AND OPEN SOURCE SOFTWARE CONTAINED WITHIN, PROVIDED WITH, OR REQUIRED FOR USE WITH THE PRODUCT, THE PRODUCT IS PROVIDED BY NIMBAL, AND OPEN SOURCE SOFTWARE ARE PROVIDED BY THEIR RESPECTIVE LICENSORS, "AS IS" WITH NO WARRANTY FROM EITHER NIMBAL OR THE LICENSORS OF OPEN SOURCE SOFTWARE. EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE LICENSED MATERIALS, SERVICES, BUYER MATERIALS AND BUYER DATA, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

6. Confidentiality and Data.

6.1 **Confidential Information.** "**Confidential Information**" means any nonpublic information directly or indirectly disclosed by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or accessible to

the Receiving Party pursuant to this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential, including without limitation technical data, trade secrets, know-how, research, inventions, processes, designs, drawings, strategic roadmaps, product plans, product designs and architecture, security information, marketing plans, pricing and cost information, marketing and promotional activities, business plans, customer and supplier information, employee and User information, business and marketing plans, and business processes, and other technical, financial or business information, and any third party information that the Disclosing Party is required to maintain as confidential. Confidential Information will not, however, include any information which: (a) was publicly known or made generally available to the public prior to the time of disclosure; (b) becomes publicly known or made generally available after disclosure through no fault of the Receiving Party; (c) is in the possession of the Receiving Party, without restriction as to use or disclosure, at the time of disclosure by the Disclosing Party; (d) was lawfully received, without restriction as to use or disclosure, from a third party (who does not have an obligation of confidentiality or restriction on use itself); or (e) is developed by the Receiving Party independently from this Agreement and without use of or reference to the Disclosing Party's Confidential Information or Proprietary Rights. Except for rights expressly granted in this Agreement, each Party reserves all rights in and to its Confidential Information. The Parties agree that the Licensed Materials, subject to terms and conditions applicable to Open Source Software, are Confidential Information of Nimbal.

6.2 **Obligations.** The Parties will maintain as confidential and will avoid disclosure and unauthorised use of Confidential Information of the other Party using reasonable precautions. Each Party will protect such Confidential Information with the same degree of care that a prudent person would exercise to protect its own confidential information of a like nature, and to prevent the unauthorised, negligent, or inadvertent use, disclosure, or publication thereof or access thereto. Each Party will restrict Confidential Information to individuals who need to know such Confidential Information and who are bound to confidentiality obligations at least as protective as the restrictions described in this Section 6. Except as necessary for the proper use of the Product, the exercise of a Party's rights under this Agreement, performance of a Party's obligations under this Agreement or as otherwise permitted under this Agreement, neither Party will use Confidential Information of the other Party for any purpose except in fulfilling its obligations or exercising its rights under this Agreement. Each Party will promptly notify the other Party if it becomes aware of any unauthorised use or disclosure of the other Party's Confidential Information, and reasonably cooperate with the other Party in attempts to limit disclosure.

6.3 **Compelled Disclosure.** If and to the extent required by law, including regulatory requirements, discovery request, subpoena, court order or governmental action, the Receiving Party may disclose or produce Confidential Information but will give reasonable prior notice (and where prior notice is not permitted by applicable Law, notice will be given as soon as the Receiving Party is legally permitted) to the Disclosing Party to permit the Disclosing Party to intervene and to request protective orders or confidential treatment therefor or other appropriate remedy regarding such disclosure. Disclosure of any Confidential Information pursuant to any legal requirement will not be deemed to render it non-confidential, and the Receiving Party's obligations with respect to Confidential Information of the Disclosing Party will not be changed or lessened by virtue of any such disclosure.

6.4 **NDA.** Buyer and Nimbal may agree that a separate nondisclosure agreement between Buyer and Nimbal (or the respective Affiliates of Buyer and Nimbal) ("**NDA**") will apply to the Subscription, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 6.1 to 6.2.

6.5 **Data Protection Obligations**. To the extent either Party collects Personal Information about the other Party, its Affiliates, and Personnel, that Party will comply with all data protection Laws, and any implementations of

such Laws, applicable to its performance under this Agreement. For purposes of this Agreement, "Personal Information" means any information relating to an identified or identifiable natural person that is subject to relevant data protection laws.

6.6 **Remedies.** Each Party agrees that in the event of a breach or threatened breach of this Section 6, the non-breaching Party will be entitled to injunctive relief against the breaching Party in addition to any other remedies to which the non-breaching Party may be entitled. Either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches any of the provisions set forth.

7. Limitations of Liability.

7.1 **LIABILITY**. IN NO EVENT SHALL NIMBAL OR LICENSORS OF OPEN SOURCE SOFTWARE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF NIMBAL UNDER OR ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL FEES PAID BY BUYER TO NIMBAL DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY.

8. Term and Termination.

8.1 **Term.** This Agreement will continue in full force and effect until conclusion of the Subscription, unless terminated earlier by either Party as provided by this Agreement.

8.2 **Termination for Convenience.** Buyer may terminate the Subscription or this Agreement without cause at any time using the termination or cancellation functionality available through the AWS Services. If a Subscription with Metered Pricing, Buyer will pay for all Product usage up to the time of termination. If a Subscription with Entitlement Pricing, Buyer will not be entitled to refund of fees nor relieved of any future payment obligations for any unused portion of the Subscription.

8.3 **Termination for Cause.** Either Party may terminate the Subscription or this Agreement if the other Party materially breaches this Agreement and does not cure the breach within 30 days following its receipt of written notice of the breach from the non-breaching Party.

8.4 **Effect of Termination.**

(a) Upon termination or expiration of the Subscription or this Agreement, Buyer's right to use the Product licensed under such Subscription will terminate, and Buyer's access to the Product and Service provided under such Subscription may be disabled and discontinued. Termination or expiration of any Subscription purchased by Buyer from Nimbal will not terminate or modify any other Subscription purchased by Buyer from Nimbal.

(b) Sections 4 (Proprietary Rights), 6 (Confidentiality and Data), 7 (Limitations of Liability), 8.4 (Effect of Termination), 9 (General) and 10 (Definitions), together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of this Agreement for any reason.

9. General.

9.1 **Applicable Law.** This Agreement will be governed and interpreted under the laws of New Zealand, excluding its principles of conflict of laws. The Parties agree that the exclusive forum for any action or proceeding will be in New Zealand, and the Parties consent to the jurisdiction of the New Zealand courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

9.2 **Assignment.** Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein without the prior written consent of the other Party, which will not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, either Party may assign this Agreement, in whole or part, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of its assets related to the Listing or the assigning Party's entire business, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment, transfer or delegation in contravention of this Section will be null and void.

9.3 **Divestiture.** If Buyer divests a portion of its business to one or more organisations that are not Affiliates of Buyer, or if an entity ceases to be an Affiliate of Buyer (such divested business unit or such entity, a "**Divested Affiliate**"), Nimbal agrees to allow such Divested Affiliate to continue to use the Product, and Buyer may elect that (a) such Divested Affiliate continue, as if it were a Buyer Affiliate, to use the Product under Buyer's AWS Marketplace account for the remainder of the Subscription, or (b) such Divested Affiliate may obtain its own Subscription to the Product for a period of 90 days after the effective date of such divestiture under the same terms and conditions as this Agreement and the same pricing as set forth in the Listing. Use by a Divested Affiliate after the conclusion of the Subscription or 90 day period, as applicable, will require a separately purchased subscription from Nimbal through an AWS Marketplace account of that Divested Affiliate or its then-current Affiliates.

9.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement is solely between Buyer and Nimbal. Neither Amazon Web Services, Inc. nor any of its Affiliates are a party to this Agreement and none of them will have any liability or obligations hereunder. The terms and conditions of this Agreement will not be changed, amended, modified or waived unless such change, amendment, modification or waiver is in writing and signed by authorised representatives of the Parties.

9.5 **Force Majeure.** Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of riots, fire, flood, earthquake, explosion, epidemics, war, strike or labour disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action or other causes beyond its reasonable control and without the fault or negligence of such Party or its Personnel and such failure or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate sourcing, workaround plans or other reasonable precautions as required under this Agreement (a "**Force Majeure Event**"). If a Force Majeure Event continues for more than 14 days for any Subscription with Entitlement Pricing, Buyer may cancel the unperformed portion of the Subscription and receive a pro rata refund of any fees prepaid by Buyer to Nimbal for such unperformed portion.

9.6 **Headings**. The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

9.7 **Notices.** To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address listed as the contact on each Party's AWS services account; and if a physical address has been provided by either party or is available on an official government register: (b) by personal delivery; or (c) by nationally recognised courier service. Notices sent by hand are served when delivered, by courier are served two (2) business days after posting, or by email are served one hour after it is sent (without the sender receiving any "bounce-back" or other error message).

9.8 **Non-waiver.** Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement will not be deemed a waiver of any such right, power or privilege under this Agreement. No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party will constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver will be valid unless executed in writing by the Party making the waiver.

9.9 **Relationship of Parties.** The relationship of the Parties will be that of independent contractors, and nothing contained in this Agreement will create or imply an agency relationship between Buyer and Nimbal, nor will this Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee between Buyer and Nimbal. Each Party assumes sole and full responsibility for its acts and the acts of its Personnel. Neither Party will have the authority to make commitments or enter into contracts on behalf of, bind, or otherwise oblige the other Party.

9.10 **Severability.** If any term or condition of this Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

10. Definitions.

10.1 "**Affiliate**" means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

10.2 "**AMI Image**" means the specific machine image in which the Product is delivered to Buyer using the Amazon Machine Image functionality of AWS Services, including the Product, the operating system and all applications, services and information included therein.

10.3 "**AWS Marketplace**" means the software marketplace operated by Amazon Web Services, Inc. located at https://aws.amazon.com/marketplace/ as it may be updated from time to time.

10.4 "**AWS Services**" means the cloud computing services offered by Amazon Web Services, Inc. as they may be updated from time to time.

10.5 "**Buyer Data**" means all data, records, files, information or content, including text, sound, video, images and software, that is provided to Nimbal by Buyer or its Users under this Agreement.

10.6 "**Buyer Materials**" means any software, techniques, property, items or materials, including Buyer Data, furnished by, Buyer to Nimbal for Nimbal's use in the performance of its obligations under this Agreement.

10.7 "**Contractor**" means any third party contractor of Buyer or other third party performing services,for Buyer, including outsourcing suppliers.

10.8 "**Documentation**" means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, "read-me" files, release notes and other materials related to the Product (including all

information included or incorporated by reference in the applicable Listing), its use, operation or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Nimbal publishes or provides under this Agreement.

10.9 "**Entitlement Pricing**" means any pricing model for Subscriptions where Buyer purchases a quantity of usage upfront, include prepaid and instalment payment pricing models.

10.10 "**Licensed Materials**" means the Product, Documentation and any other items, materials or deliverables that Nimbal provides under this Agreement.

10.11 "**Metered Pricing**" means any pricing model for Product Subscriptions where Buyer pays as it goes based on the quantity of its usage of the Product.

10.12 "**Personnel**" means a Party or its Affiliate's directors, officers, employees, non-employee workers, agents, auditors, consultants, contractors, subcontractors and any other person performing services on behalf of such Party (but excludes the other Party and any of the foregoing of the other Party).

10.13 "**Proprietary Rights**" means all intellectual property and proprietary rights throughout the world, whether now known or hereinafter discovered or invented, including, without limitation, all: (a) patents and patent applications; (b) copyrights and mask work rights; (c) trade secrets; (d) trademarks; (e) rights in data and databases; and (f) analogous rights throughout the world.

10.14 "**Services**" means all services and tasks that Nimbal provides, or is obligated to provide, under this Agreement, including without limitation Support Services.

10.15 "**Product**" means computer software offered by Nimbal under a Listing, which is delivered in a machine image using the Amazon Machine Image functionality of AWS Services, including any patches, bug fixes, corrections, remediation of security vulnerabilities, updates, upgrades, modifications, enhancements, derivative works, new releases and new versions of the software that Nimbal provides under this Agreement. Buyer deploys and runs the AMI Image containing the Product under Buyer's own AWS Services account on AWS Services infrastructure.

10.16 "**Listing**" means an offer by Nimbal or a Reseller, as set forth in the detail page on the AWS Marketplace, to license Product for a specific use capacity and provide Support Services, including Nimbal's policies and procedures referenced or incorporated in the detail page.

10.17 "**Subcontractor**" means any third party subcontractor or other third party to whom Nimbal delegates any of its duties and obligations under this Agreement.

10.18 "**Subscription**" means a subscription ordered by Buyer in the AWS Marketplace and fulfilled by, Nimbal for the licensing and provision of Product listed in a Listing.

10.19 "**Support Services**" means the support and maintenance services for the Product as described in the Listing and Documentation.

10.20 "**User**" means an employee, non-employee worker or other member of Buyer or any of its Affiliates' workforces, Contractor of Buyer or any of its Affiliates or other person or software program or computer systems authorised by Buyer or any of its Affiliates to access and use the Product as permitted under this Agreement.