

## STANDARD CONTRACT FOR AWS MARKETPLACE

### 1. Scope.

**1.1 Terms and Conditions.** This Standard Contract for AWS Marketplace (the “**Standard Contract**”) sets forth the terms and conditions applicable to the licensing of Software from the licensor (“**Licensor**”) by the Party subscribing to the Software (“**Buyer**”) through the AWS Marketplace, deployed via AMI, via a Standard Contract Listing. The offer of the Software as a Standard Contract 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 Standard Contract and their entry into this Agreement (defined below). Unless defined elsewhere in this Standard Contract, terms in initial capital letters have the meanings set forth in Section 12 of this Agreement. Buyer and Licensor may be referred to collectively as the “**Parties**” or individually as a “**Party**”.

**1.2 Software Subscription.** Buyer will subscribe to a Subscription as set forth in the Standard Contract Listing in accordance with this Agreement. Licensor will supply and sell the Subscription to Buyer, or Buyer may purchase the Subscription from Licensor’s authorized reseller (“**Reseller**”). A Subscription, as described in the applicable Standard Contract Listing, may be for Software deployed via AMI (“**AMI Software**”). Software may be targeted for specific geographic regions, and Support Services may vary by geography as set forth in the applicable Standard Contract Listing. A Subscription may be provided on a Metered Pricing, Entitlement Pricing or other basis through the functionality available through AWS Services as determined by Licensor in its sole and exclusive discretion. The fee or rate for the Subscription is set forth in the applicable Standard Contract Listing. For Subscriptions provided on a Metered Pricing basis, upon written request by Buyer, Licensor will provide sufficient documentation from its books and records reasonably necessary 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. Licensor 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. Licensor will be responsible for all other taxes or fees arising (including interest and penalties) from transactions and the documentation of transactions under this Agreement. Upon request, Buyer will provide such information to Licensor as reasonably required to determine whether Licensor is obligated to collect Taxes from Buyer. Licensor will not collect (or will refund to Buyer), and Buyer will not be obligated to pay (or will be entitled to a refund from Licensor), any such Tax or duty for which Buyer furnishes Licensor a properly completed exemption certificate or a direct payment permit certificate or for which Licensor claims an available exemption from Tax. Licensor 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.

**1.4 Agreement.** Each Subscription is subject to and governed by this Standard Contract, the applicable Standard Contract Listing, and any amendments to any of the foregoing as may be agreed upon by the Parties, which together constitute the agreement between Buyer and Licensor (the “**Agreement**”). Each Subscription is a separate agreement between Buyer and Licensor. 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 Standard Contract; and (c) the Standard Contract Listing.

**1.5 Audits.** Buyer shall maintain complete, accurate and detailed records regarding all parameters specified herein that are required to calculate the amounts to be charged to Buyer hereunder and to demonstrate its compliance with the terms of this Agreement. Buyer shall retain such records for no less than three (3) years from

date of payment for such amount charged. Buyer shall allow Licensor and/or its authorized representatives to inspect and conduct audits on such records during normal business hours upon five (5) business day's written notice, provided that in no event shall such inspection be conducted hereunder more frequently than once every twelve (12) months and such notice is not required if the inspection and audit is in response to a Buyer's actual or suspected breach of the terms of this Agreement. If legitimate discrepancies or questions arise with respect to such records, Buyer shall preserve such records until an agreement is reached with Licensor regarding their disposition. Each party shall bear its own expenses in conducting the audit and responding to information requests and Buyer shall not pass on such costs (including employee time, overhead, research, copying charges, professional fees, etc.) to Licensor. If an audit reveals that Buyer has been undercharged by Licensor for any fees, expenses or any other charges under this Agreement, for any logically or readily identifiable component of the Subscription or chargeable material, Buyer shall promptly reimburse Licensor in full for such undercharge(s). If such undercharges exceed five percent (5%) of the Fees, expenses or any other charges under this Agreement or the audit reveals or confirms a breach, Buyer shall also promptly reimburse Licensor for all reasonable internal and external audit expenses incurred by Licensor.

## **2. Licenses.**

### **2.1 Licensed Materials.**

**2.1.1** If the Subscription is for AMI Software, Licensor hereby grants to Buyer, subject to Section 2.1.3, a nonexclusive, worldwide (subject to Section 6 of this Agreement), nontransferable (except in connection with an assignment permitted under Section 11.3 of this Agreement), revocable, non-sublicensable, term license under all Proprietary Rights in and to the AMI Software and AMI Image, to deploy, operate and use the AMI Software and AMI Image under Buyer's own AWS Services account on AWS Services infrastructure for its own internal business purpose in accordance with the applicable Standard Contract Listing and to allow its Users to access and use the AMI Software and AMI Image as so deployed.

**2.1.2** Buyer may use the Software and the AMI Image, only: in support of the internal operations of Buyer's and its Affiliates' business(es) or organization(s), in connection with Buyer's and its Affiliates' products and services (but, for clarity, not as a stand-alone product or service of Buyer or its Affiliates), and in connection with Buyer's and its Affiliate's interactions with Users.

**2.1.3** Buyer may make a reasonable number of copies of the Documentation as necessary to use such Software, and as applicable the AMI Image, in accordance with the rights granted under this Agreement, provided that Buyer includes all proprietary legends and other notices on all copies. Licensor retains all rights not expressly granted to Buyer under this Agreement.

**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. Contractor's use of the Licensed Materials is limited to the sole purpose of supporting the internal business operations of Buyer for which Buyer is using such Licensed Material as permitted hereunder.

**2.3 Restrictions.** Except as specifically provided in this Agreement, Buyer and any other User of any Licensed Materials, in whole or in part, may not: (a) subject to Section 2.1.3 of this Agreement, copy the Licensed Materials, in whole or in part; (b) distribute copies of Licensed Materials, in whole or in part, to any third party; (c) modify, adapt, translate, make alterations to or make derivative works based on Licensed Materials or any part thereof; (d) except as permitted by Law, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software; (e) violate or circumvent any technological restrictions within the Licensed Materials; (f) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to any part of the Licensed Materials to third parties; (g) access the Licensed materials for the purpose of monitoring its availability, penetration or security testing, or any benchmarking or competitive purposes; (h) use the Licensed Materials to act as a consultant, service bureau or application service provider; (i) permit access of any kind to the Licensed Materials to any third party; or (j) using the Licensed Materials in a clustered configuration.

**2.4 Open Source Software.** Subject to the requirements of Section 5.1(c) of this Agreement, Software may contain or be provided with components that are subject to the terms and conditions of "open source" software licenses ("Open Source Software"). If Buyer's use of the Software subjects Buyer to the terms of any license governing the use of Open Source Software and to the extent required by the license to which the Open Source Software is subject, the terms of such license 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. The Software is not subject to any “copyleft” or other obligation or condition (including any obligation or condition under any “open source” license such as the GNU Public License, Affero GNU Public License, or Mozilla Public License) that: (i) requires or conditions the use or distribution of such Software on the disclosure, licensing, or distribution of any source code for any portion of such software; or (ii) could otherwise impose any limitation, restriction, or condition on the right or ability to Buyer to use or distribute such Software, except as otherwise provided herein.

**2.5 No Additional Terms.** No shrink-wrap, click-acceptance or other terms and conditions outside this Agreement provided with any Licensed Materials or any part thereof (“**Additional Terms**”) will be binding on Buyer or its Users, even if use of the Licensed Materials, or any part thereof, requires an affirmative “acceptance” of such Additional Terms before access to or use of the Licensed Materials, or any part thereof, is permitted. All such Additional Terms will be of no force or effect and will be deemed rejected by Buyer in their entirety. For clarity, the Software, fee structure (Entitlement Pricing or Metered Pricing), technical requirements for use of the Software, Support Services, are not Additional Terms subject to this Section.

**2.6 High-Risk Activities.** The Software 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 Software could lead to severe physical or environmental damages (“**High Risk Activities**”). Buyer will not use the Software for High Risk Activities.

### 3. Services.

**3.1 Support Services.** Licensor will provide Documentation to allow a reasonably competent user to access and use the Software.

### 4. Proprietary Rights.

**4.1 Licensed Materials.** Subject to the licenses granted herein, Licensor 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**”), Licensor may use and incorporate Feedback in Licensor’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 Licensed Materials.** Licensor represents and warrants that: (a) for Subscriptions with Entitlement Pricing, the Software, and the AMI Image will conform, in all material respects, to the Documentation during the Warranty Period; (b) AMI Software will not contain any automatic shut-down, lockout, “time bomb” or similar mechanisms that could interfere with Buyer’s exercise of its rights under this Agreement (for clarity, the foregoing does not prohibit license keys that expire at the end of the Subscription); and (c) the Software, and Buyer’s use thereof as permitted under this Agreement, will not be subject to any license or other terms that require that any Buyer Data, Buyer Materials or any software, documentation, information or other materials integrated, networked or used by Buyer with the Software, in whole or in part, be disclosed or distributed in source code form, be licensed for the purpose of making derivative works, or be redistributable at no charge.

**5.2 Remedies.** If any Software or Service fails to conform to the foregoing warranties, Licensor promptly will, at its option and expense, correct the Software and re-perform the Services as necessary to conform to the warranties. If Licensor does not correct the Software or re-perform the Services to conform to the warranties within a reasonable time, not to exceed 30 days, as Buyer's sole remedy and Licensor's exclusive liability (except as provided in Section 8 of this Agreement), Buyer may terminate the Subscription and this Agreement without further liability and Licensor will provide Buyer with a refund of any fees prepaid to Licensor by Buyer, prorated for the unused portion of the Subscription.

**5.3 Warranty Exclusions.** Licensor will have no liability or obligation with respect to any warranty to the extent attributable to any: (a) use of the Software by Buyer in violation of this Agreement or applicable Law; (b) unauthorized modifications to the Licensed Materials made by Buyer or its Personnel; (c) use of the Software in combination with third-party equipment or software not provided or made accessible by Licensor or contemplated by the Standard Contract Listing or Documentation; or (d) use by Buyer of Software in conflict with the Documentation, to the extent that such nonconformity would not have occurred absent such use or modification by Buyer.

**5.4 Compliance with Laws.** 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.

**5.5 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 has been duly authorized; 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.

**5.6 Disclaimer.** 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, AND BUYER MATERIALS, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. Licensor does not warrant: (a) that the Licensed Materials will meet Buyer's requirements; or (b) that the operation of the Software will be uninterrupted or error free.

## **6. Confidentiality.**

**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 and any and all data related to the Software provided hereunder are Confidential Information of Licensor.

**6.2 Obligations.** The Parties will maintain as confidential and will avoid disclosure and unauthorized 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 unauthorized, 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 Software, 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 unauthorized 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 Injunctive Relief.** Each Party acknowledges that in the event of a breach of this Section 6 damages may not be an adequate remedy and the Disclosing Party may be entitled to seek, in addition to any other rights and remedies available under the Agreement or at law or in equity, injunctive relief to restrain any such breach, threatened or actual, without proof of irreparable injury and without the necessity of posting bond even if otherwise normally required.

## **7. Limitations of Liability.**

**7.1 Disclaimer; General Cap.** SUBJECT TO SECTIONS 7.2, 7.3 AND 7.4 OF THIS AGREEMENT, IN NO EVENT WILL (a) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, EXCEED THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID BY BUYER FOR THE SUBSCRIPTION.

**7.2 Exception for Gross Negligence, Willful Misconduct or Fraud.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 7.1(a) AND (b) OF THIS AGREEMENT WILL NOT APPLY TO A PARTY'S WILLFUL MISCONDUCT OR FRAUD.

**7.3 Exception for Certain Indemnification Obligations.** FOR THE PURPOSE OF CLARIFICATION, ANY AND ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONSEQUENTIAL AND SIMILAR DAMAGES, AWARDED TO A THIRD PARTY BY A COURT OF COMPETENT JURISDICTION FOR WHICH INDEMNIFICATION IS PROVIDED UNDER THIS AGREEMENT SHALL BE DEEMED DIRECT DAMAGES AS BETWEEN BUYER AND LICENSOR.

**7.4 Exception for Buyers' Breach of Section 2.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 7.1(a) AND (b) OF THIS AGREEMENT WILL NOT APPLY TO BUYER'S BREACH OF ANY OF THE TERMS SET FORTH IN SECTION 2 OF THIS AGREEMENT OR BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

## **8. Indemnification.**

**8.1 Licensor Indemnity.** Licensor will, at its expense, indemnify, defend and hold harmless Buyer and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Buyer Indemnified Parties**") 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 attorneys' fees) ("**Claims**"), to the extent arising out of or relating to an allegation under such Claims of any of the following: (a) direct infringement, misappropriation or violation of any Proprietary Rights by the Licensed Materials or Buyer's use thereof as permitted under this Agreement (the "Infringing Product").

**8.2 Buyer Indemnity.** Buyer will, at its expense, indemnify, defend and hold harmless Licensor and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Licensor Indemnified Parties**") from and against any and all **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 Licensor's use thereof as permitted under this Agreement.

**8.3 Process.** The party(ies) seeking indemnification pursuant to this Section 8 (each, an

**“Indemnified Party”** and collectively, the **“Indemnified Parties”**) will give the other Party (the **“Indemnifying Party”**) prompt notice of each Claim for which it seeks indemnification, provided that failure or delay in providing such notice will not release the Indemnifying Party from any obligations hereunder except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Parties will give the Indemnifying Party their reasonable cooperation in the defense of each Claim for which indemnity is sought, at the Indemnifying Party’s expense. The Indemnifying Party will keep the Indemnified Parties informed of the status of each Claim. An Indemnified Party may participate in the defense at its own expense. The Indemnifying Party will control the defense or settlement of the Claim, provided that the Indemnifying Party, without the Indemnified Parties’ prior written consent: (a) will not enter into any settlement that; (i) includes any admission of guilt or wrongdoing by any Indemnified Party; (ii) imposes any financial obligations on any Indemnified Party that Indemnified Party is not obligated to pay under this Section 8; (iii) imposes any non-monetary obligations on any Indemnified Party (except with respect to restriction of use of the Infringing Product where Licensor is the Indemnifying Party); and (iv) does not include a full and unconditional release of any Indemnified Parties; and (b) will not consent to the entry of judgment, except for a dismissal with prejudice of any Claim settled as described in (a). The Indemnifying Party will ensure that any settlement into which it enters for any Claim is made confidential, except where not permitted by applicable Law.

**8.4 Infringement Remedy.** In addition to Licensor’s obligations under Section 8.1, if the Software or other Licensed Materials is held, or in Licensor’s opinion is likely to be held, to infringe, misappropriate or violate any Proprietary Rights, or, if based on any claimed infringement, misappropriation or violation of Proprietary Rights, an injunction is obtained, or in Licensor’s opinion an injunction is likely to be obtained, that would prohibit or interfere with Buyer’s use of the Licensed Materials under this Agreement, then Licensor will at its option and expense either: (a) procure for Buyer the right to continue using the affected Licensed Materials in accordance with the license granted under this Agreement; or (b) modify or replace the affected Licensed Materials so that the modified or replacement Licensed Materials are reasonably comparable in functionality, interoperability with other software and systems, and levels of security and performance and do not infringe,



misappropriate or violate any third-party Proprietary Rights. If, in such circumstances, Licensor cannot successfully accomplish any of the foregoing actions on a commercially reasonable basis, Licensor will notify Buyer and either Party may terminate the Subscription and this Agreement, in which case Licensor will refund to Buyer any fees prepaid to Licensor by Buyer prorated for the unused portion of the Subscription. For clarity, Licensor's indemnification and defense obligations under this Section include infringement Claims based on use of the Licensed Materials by Buyer Indemnified Parties following an initial infringement Claim except that, if Licensor responds to an infringement Claim by accomplishing the solution in (b), Licensor will have no obligation to defend and indemnify Buyer for infringement Claims arising from Buyer's use after the accomplishment of (b) of the infringing Licensed Materials for which Licensor provided modified or replacement Licensed Materials.

## **8.5 Limitations.**

**8.5.1** Licensor will have no liability or obligation under this Section 8 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Licensed Materials not provided by Licensor or its Personnel; (b) use of the Software in combination with third-party equipment or software not provided or made accessible by Licensor or not specifically referenced for use with the Licensed Materials by the Standard Contract Listing or Documentation; (c) use of the Licensed Materials by Buyer in breach of this Agreement; (d) use of any version of the Software when an upgrade or a newer iteration of the Software made available by Licensor could have avoided the infringement; (e) data or information which Buyer or a third party utilize in connection with Software; or (f) Open Source Software. Licensor's liability under this Section 8 with respect to any infringement Claim that is attributable to use of the Software in combination with third-party equipment or software provided or made accessible by Licensor or specifically referenced by the Standard Contract Listing or Documentation is limited to Licensor's proportional share of defense costs and indemnity liability based on the lesser of: (i) the value of the contribution of the Licensed Materials to the total value of the actual or allegedly infringing combination; or (ii) the relative contribution of the Licensed Materials to the actual or allegedly infringed claims (e.g., the Licensed Materials are alleged to satisfy one limitation of a claim with four separate limitations and Licensor would be responsible for a 25% share of the defense and indemnity obligations).

**8.5.2** Buyer will have no liability or obligation under this Section 8 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Buyer Materials not provided by Buyer or its Personnel; or (b) use of the Buyer Materials by Licensor in breach of this Agreement.

**8.5.3** This Section 8 states the entire liability of Licensor with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Licensed Materials or any part thereof or by any use thereof by Buyer, and this Section 8 states the entire liability of Buyer with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Buyer Materials or any part thereof or by any use, receipt, storage or processing thereof by Licensor.

**8.6 Not Limiting.** The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by a Party.

## **9. Term and Termination.**

**9.3 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.

**9.4 Termination for Convenience.** Either party may terminate the Subscription or this Agreement without cause at any time upon notice to the other party or using the termination or cancellation functionality available through the AWS Services. If a Subscription with Metered Pricing, Buyer will pay for all Software 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.

**9.5 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.

**9.6 Effect of Termination.**

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

**9.6.2** Sections 4 (Proprietary Rights), 6 (Confidentiality), 7 (Limitations of Liability), 8 (Indemnification), 9.6 (Effect of Termination), 10 (Insurance), 11 (General) and 12 (Definitions) and any perpetual license granted under this Agreement, 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; but the nonuse and nondisclosure obligations of Section 6 of this Agreement will expire five years following the expiration or termination of this Agreement, except with respect to, and for as long as, any Confidential Information constitutes a Trade Secret. "Trade Secret(s)" means information from which a party derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by, proper means by other persons, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**10. Insurance.**

**10.3 Coverages.** Buyer and Licensor agree to carry and maintain in force at all times during the term of this Agreement the lines of insurance coverage with minimum policy limits as follows:

**10.3.1** With respect to each party's workers, Workers' Compensation with limits as prescribed by applicable state law and Employer's Liability with limits of not less than \$1,000,000, per accident, per employee and in the aggregate;

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**10.3.2** Commercial General Liability with limits of not less than \$1,000,000, combined single limit bodily injury and property damage, per occurrence and \$2,000,000 in the aggregate; and

**10.3.3** Professional Services Errors & Omissions Liability with limits of not less than \$2,000,000.

**10.4** Buyer and Licensor agree to provide to the other certificates of insurance evidencing these coverages and limits upon reasonable written request..

## **11. General.**

**11.1 Applicable Law.** This Agreement will be governed and interpreted under the laws of the State of California, excluding its principles of conflict of laws. In the event a judicial proceeding is necessary, the sole forum for resolving disputes arising under or relating to this Agreement are the state and federal courts located in the state in which the principal business office of the defendant is located and all related appellate courts, and the parties hereby consent to the jurisdiction of such courts. Such consent shall be binding and inure to the benefit of the permitted assigns of the parties. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**11.2** Except for claims for breach of confidentiality obligations, the parties agree that as a condition precedent to the institution of any action regarding disputes arising under or in connection with this Agreement all such disputes shall first be submitted to mediation before a professional mediator selected by the parties. Such mediation shall be conducted at a mutually agreed time and place, shall not be less than two days in length, and the costs and expenses of the mediation, including but not limited to the mediator's fees, shall be split equally between the parties. The parties agree that they will participate in the mediation in good faith. The parties further agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by mutual agreement in mediation within sixty days of the request of a party for such a mediation, shall be submitted to binding arbitration to be held in Orange County, California, in accordance with the American Arbitration Association rules then in effect. One arbitrator shall be selected in accordance with the American Arbitration Association rules; provided, any arbitrator shall be independent, impartial and be an attorney or retired judge with at least ten years of experience in the area of dispute. If a mediation process is not established or one party fails to agree on a mediation process or fails to participate in the mediation as agreed herein, the other party can commence arbitration prior to the expiration of the sixty day period. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties shall share equally in the costs of the arbitration. In any suit or arbitration to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees, including without limitation, costs and fees incurred on appeal or in a bankruptcy or similar action; provided, however, that prior to the initiation of such suit or arbitration the prevailing party participated in good faith in mediation as set forth above or offered in good faith to participate in mediation and the other party refused or failed to participate in such mediation proceedings.

**11.3 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 reasonably 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 Standard Contract Listing or the assigning Party's entire business, whether by sale of assets, sale of stock, merger or otherwise; provided, however, that the successor or Affiliate assumes all obligations under this Agreement of the assigning party in writing and the assigning party provide reasonable advanced written notice of such assignment. Any attempted assignment, transfer or delegation in

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contravention of this Section will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

**11.4 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 Licensor. 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 authorized representatives of the Parties. NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED ORALLY OR IN ANY QUOTATION, PURCHASE ORDER, INVOICE, SHIPPING DOCUMENT, ONLINE TERMS AND CONDITIONS, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

**11.5 Force Majeure.** Except for Buyer's payment obligations hereunder, 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 labor disputes (not involving the Party claiming force majeure), embargo, pandemic, epidemic, communicable diseases, 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. 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 Licensor for such unperformed portion.

**11.6 Export Laws.** Each Party will comply with all applicable customs and export control laws and regulations of the United States and/or such other country, in the case of Buyer, where Buyer or its Users use the Software or Services, and in the case of Licensor, where Licensor provides the Software or Services. Each Party certifies that it and its Personnel are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals and the Commerce Department's list of Denied Persons. Neither Party will export, re-export, ship, or otherwise transfer the Licensed Materials, Services or Buyer Data to any country subject to an embargo or other sanction by the United States.

**11.7 Government Rights.** As defined in FARS §2.101, the Software and Documentation are “commercial items” and according to DFARS §252.227 and 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation”. Consistent with FARS §12.212 and DFARS §227.7202, any use, modification, reproduction, release, performance, display or disclosure of such commercial software or commercial software documentation by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**11.8 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.

**11.9 No Third-Party Beneficiaries.** Except as specified in Section 8 of this Agreement with respect to Buyer Indemnified Parties and Licensor Indemnified Parties, nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

**11.10 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 designated by such Party as a notice address for the Standard Contract; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt. A copy of any notice to Licensor shall be sent to that attention of the UST Legal Department at 5 Polaris Way, Aliso Viejo, CA 92656 with respect to notices regarding breach of the Agreement, termination, indemnification and any other legal matter.

**11.11 Nonwaiver.** 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.

**11.12 Publicity.** Neither Party will issue any publicity materials or press releases that refer to the other Party or its Affiliates, or use any trade name, trademark, service mark or logo of the other Party or its Affiliates in any advertising, promotions or otherwise, without the other Party’s prior written consent.

**11.13 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 Licensor, nor will this Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee between Buyer and Licensor. 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.

**11.14 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.

**11.15 Subcontracting.** Licensor may use Subcontractors in its performance under this Agreement, provided that: (a) Licensor remains responsible for all its duties and obligations hereunder and the use of any Subcontractor will not relieve or reduce any liability of Licensor or cause any loss of warranty under this Agreement; and (b) Licensor agrees to be directly liable for any act or omission by such Subcontractor to the same degree as if the act or omission were performed by Licensor such that a breach by a Subcontractor of the provisions of this Agreement will be deemed to be a breach by Licensor. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Licensor will be deemed the act or omission of

Licensor. Upon reasonable written request, Licensor will identify to Buyer any Subcontractors performing under this Agreement,

including any that have access to Buyer Data, and such other information reasonably requested by Buyer about such subcontracting.

**11.16** Licensor may use Buyer's name and trademarks in its marketing materials for the sole and limited purpose of referencing Buyer as a Licensor customer of the Subscription under this Agreement. Any other use of Buyer's name or trademarks will require Buyer's prior written consent.

**11.17 Electronic Signatures.** The parties agree electronic signatures may be utilized for execution of this Agreement and any attachments hereto. The parties acknowledge and agree that (i) the issuance of an electronic signature shall be valid and enforceable as to the signing party to the same extent as an inked original signature; and (ii) these documents shall constitute "original" documents when printed from electronic files and records established and maintained by either party in the normal course of business. Unless otherwise agreed to by the parties, the purchase order number (issued by Buyer) shall constitute Buyer's electronic signature and consent to any purchase order and the Licensor's invoice number shall constitute Licensor's electronic signature and consent to provide the Subscription and/or other related services. Each party agrees that the Buyer purchase order number or the Licensor invoice number, as issued by the respective party, shall be sufficient to verify that such party originated the document. Neither party shall disclose to any unauthorized person the purchase order number or the invoice number.

## **12. Definitions.**

**12.1 "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, at the time of execution of the Agreement and any time thereafter, where "control" is defined as (a) the ownership of at least fifty percent (50%) of the equity or beneficial interest of such entity, or (b) any other entity with respect to which such Party has significant management or operational responsibility (even though such Party may own less than fifty percent (50%) of the equity of such entity).

**12.2 "AMI"** means a way that the Software offered under a Standard Contract Listing may be provisioned to Buyer where the Software is delivered in a machine image using the Amazon Machine Image functionality of AWS Services. Buyer deploys and runs the AMI Image containing the AMI Software under Buyer's own AWS Services account on AWS Services infrastructure.

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

**12.4 "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.

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

**12.6 "Buyer Data"** means all data, records, files, information or content, including text, sound, video, images and software, that is (a) input or uploaded by Buyer or its Users to or collected, received, transmitted, processed, or stored by Buyer or its Users using the Software in connection with this Agreement, or (b) derived from (a). Buyer Data is Confidential Information of Buyer.

### **12.7**

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

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

**12.10 “Documentation”** means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, “read-me” files, release notes and other materials related to the Software (including all information included or incorporated by reference in the applicable Standard Contract Listing), its use, operation or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Licensor publishes or provides under this Agreement.

**12.11 “Entitlement Pricing”** means any pricing model for AMI Software where Buyer purchases a quantity of usage upfront, include prepaid and installment payment pricing models.

**12.12 “Licensed Materials”** means the Software, Documentation and any other items, materials or deliverables that Licensor provides, or is obligated to provide, under this Agreement.

**12.13 “Metered Pricing”** means any pricing model for AMI Software where Buyer pays as it goes based on the quantity of its usage of the Software.

**12.14 “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).



**12.15 “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.

**12.16 “Services”** means all services and tasks that Licensor provides, or is obligated to provide, under this Agreement, including without limitation Support Services.

**12.17 “Software”** means the computer software identified in the applicable Standard Contract Listing and any other software, 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 Licensor provides, or is obligated to provide, under this Agreement.

**12.18 “Standard Contract Listing”** means an offer by Licensor or a Reseller, as set forth in the detail page on the AWS Marketplace, to license Software for a specific use capacity and provide Support Services subject to this Standard Contract, including Licensor’s policies and procedures referenced or incorporated in the detail page.

**12.19 “Subcontractor”** means any third party subcontractor or other third party to whom Licensor delegates any of its duties and obligations under this Agreement.

**12.20 “Subscription”** means a subscription ordered by Buyer in the AWS Marketplace and fulfilled by Licensor for the licensing and provision of AMI Software listed in a Standard Contract Listing.

**12.21 “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 authorized by Buyer or any of its Affiliates to access and use the Software as permitted under this Agreement.

**“Warranty Period”** means, 30 days after Buyer’s purchase of the Subscription or the term of the Subscription, whichever is shorter.