

TERMS AND CONDITIONS FOR WORKSPACES MANAGER PURCHASED THROUGH THE AWS MARKETPLACE

1. Definitions and interpretation

- 1.1 In these Terms and Conditions, the following words and expressions have the following meanings:

“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.
“AMI”	means a way that the Software offered under an AWS Marketplace Listing may be provisioned to Customer where the Software is delivered in a machine image using the Amazon Machine Image functionality of AWS Services. Customer deploys and runs the AMI Image containing the Software under Customer’s own AWS Services account on AWS Services infrastructure.
“AMI Image”	means the specific machine image in which Software is delivered to Customer using the Amazon Machine Image functionality of AWS Services, including the Software, the operating system and all applications, services and information included therein.
“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.
“AWS Marketplace Listing”	means an offer by Nuvens, as specified in the detail page on the AWS Marketplace, to license Software for a specific use capacity and provide Support Services subject to these Terms and Conditions, including Nuvens’ policies and procedures referenced or incorporated in the detail page.
“AWS Services”	means the cloud computing services offered by Amazon Web Services, Inc. as they may be updated from time to time.
“Customer Data”	means all data, records, files, information or content, including text, sound, video, images and software, that is (a) input or uploaded by Customer or its Users to or collected, received, transmitted, processed, or stored by Customer or its Users using the Software in connection with the Agreement, or (b) derived from (a). Customer Data is Confidential Information of Customer.
“Customer Materials”	means any property, items or materials, including Customer Data, furnished by Customer to Nuvens for Nuvens’ use in the performance of its obligations under the Agreement.

“Contractor”	means any third party contractor of Customer or other third party performing services for Customer, including outsourcing suppliers.
"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 AWS Marketplace Listing), its use, operation or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Nuvens publishes or provides under the Agreement.
“Intellectual Property 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.
“Licence”	means a licence for the Software purchased by Customer in the AWS Marketplace.
“Licensed Materials”	means the Software, Documentation and any other items, materials or deliverables that Nuvens provides, or is obligated to provide, under the Agreement.
“Nuvens”	means Nuvens Consulting Limited, a company registered in England and Wales with number 09937115 and its registered office at 7 Bell Yard, London, England, WC2A 2JR.
“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).
“Services”	means all services and tasks that Nuvens provides, or is obligated to provide, under the Agreement, including without limitation Support Services.
“Software”	means the computer software identified in the applicable AWS Marketplace Listing as ‘WorkSpaces Manager’ 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 WorkSpaces Manager that Nuvens provides, or is obligated to provide, under the Agreement.
“Subcontractor”	means any third party subcontractor or other third party to whom Nuvens delegates any of its duties and obligations under the Agreement.

“Support Services”	means the support and maintenance services for the Software that Nuvens provides, or is obliged to provide, as described in the AWS Marketplace Listing.
“User”	means an employee, non-employee worker or other member of (a) Customer or any of its Affiliates’ workforces (b) Contractor of Customer or any of its Affiliates or (c) other person or software program or computer systems authorised by Customer or any of its Affiliates to access and use the Software as permitted under the Agreement.
“Warranty Period”	means 30 days after Customer’s purchase of the Licence or the term of the Licence, whichever is shorter.

1.2 In these Terms and Conditions, unless the context otherwise requires:

- (a) reference to any gender includes all genders, and references to the singular includes the plural (and vice versa);
- (b) a **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns;
- (c) references to any legislation shall be construed as references to legislation as from time to time amended, re-enacted or consolidated;
- (d) **“including”**, **“includes”** or **“in particular”** means including, includes or in particular without limitation;
- (e) clause headings shall not affect the interpretation of these Terms and Conditions; and
- (f) a reference to **“writing”** or **“written”** includes e-mail.

2. Scope

- 2.1 These terms and conditions apply to the licensing of the Software by Nuvens by the Customer through the AWS Marketplace via an AWS Marketplace Listing. The offer of a Licence on the AWS Marketplace, and Customer’s purchase of the Licence on the AWS Marketplace, constitutes each Party’s respective acceptance of these Terms and Conditions and their entry into the Agreement. For the purposes of the Agreement, the purchase by Customer of additional Licence(s) using the Software itself is deemed to constitute a purchase of the Licence(s) on the AWS Marketplace. Customer and Nuvens may be referred to collectively as the **“Parties”** or individually as a **“Party”**.
- 2.2 Customer purchases Licence(s) as specified in the AWS Marketplace Listing in accordance with the Agreement. Customer is responsible for all Licence(s) purchased by its Users, whether via the AWS Marketplace Listing, using the Software’s ‘auto-create’ function or otherwise. Nuvens will supply the Licence(s) to Customer. The Software is deployed via AMI. The Software is provided through the functionality available through AWS Services. The fee for each Licence is specified in the applicable AWS Marketplace Listing. Nuvens will provide sufficient documentation from its books and records to allow Customer to verify the metered usage charged to Customer for the Software.
- 2.3 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 the Agreement. Applicable taxes and duties may be due in addition to the

fees or rates payable by Customer. Nuvens may charge and Customer 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 Software purchased by customers on the AWS Marketplace, and Customer will pay such Taxes. Customer will receive a compliant tax invoice, where required. Nuvens will be responsible for all other taxes or fees arising (including interest and penalties) from transactions and the documentation of transactions under the Agreement. Upon request, Customer will provide such information to Nuvens as reasonably required to determine whether Nuvens is obligated to collect Taxes from Customer. Nuvens will not collect (or will refund to Customer), and Customer will not be obliged to pay (or will be entitled to a refund from Nuvens), any such Tax or duty for which Customer furnishes Nuvens a properly completed exemption certificate or a direct payment permit certificate or for which Nuvens claims an available exemption from Tax. Nuvens will provide Customer with any forms, documents or certifications as may be required for Customer to satisfy any information reporting or withholding tax obligations with respect to any payments under the Agreement.

- 2.4 Each Purchase is subject to and governed by these Terms and Conditions, the applicable AWS Marketplace Listing, the terms and conditions of the NDA (if any), and any amendments to any of the foregoing as may be agreed upon by the Parties, which together constitute the agreement between Customer and Nuvens (the “**Agreement**”). Each purchase of Software is a separate agreement between Customer and Nuvens. In the event of any conflict between the terms and conditions of the various components of the Agreement, the following order of precedence will apply: (a) any amendment agreed upon by the Parties; (b) the NDA (if any); (c) these Terms and Conditions; and (d) the AWS Marketplace Listing.

3. Licences

- 3.1 Nuvens hereby grants to Customer, subject to clause 3.2, a non-exclusive, worldwide (subject to clause 12.6), non-transferable (except in connection with an assignment permitted under clause 12.2 or a divestiture permitted under clause 12.3), non-terminable (except as provided in clause 10) licence under all Intellectual Property Rights in and to the Software and AMI Image, to deploy, operate and use the Software and AMI Image under Customer’s own AWS Services account on AWS Services infrastructure in accordance with the applicable AWS Marketplace Listing and to allow its Users to access and use the Software and AMI Image as so deployed.
- 3.2 Customer may use the Software and the AMI Image only: in support of the internal operations of Customer’s and its Affiliates’ business(es) or organisation(s), in connection with Customer’s and its Affiliates’ products and services (but, for clarity, not as a stand-alone product or service of Customer or its Affiliates), and in connection with Customer’s and its Affiliate’s interactions with Users.
- 3.3 Customer 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 the Agreement, provided that Customer includes all proprietary legends and other notices on all copies. Nuvens retains all rights not expressly granted to Customer under the Agreement.
- 3.4 With respect to Affiliates and Contractors that Customer allows to use the Licensed Materials: (a) Customer remains responsible for all obligations hereunder arising in connection with such Affiliate’s or Contractor’s use of the Licensed Materials; and (b) Customer 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 Customer such that a breach by an Affiliate or a Contractor of the provisions of the Agreement will be deemed to be a breach by Customer. The performance

of any act or omission under the Agreement by an Affiliate or a Contractor for, by or through Customer will be deemed the act or omission of Customer.

- 3.5 Except as specifically provided in the Agreement, Customer 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; (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) use, rent, loan, sub-licence, lease, distribute or attempt to grant other rights to any part of the Licensed Materials to third parties; (f) use the Licensed Materials to act as a consultant, service bureau or application service provider; or (g) permit access of any kind to the Licensed Materials to any third party.
- 3.6 Subject to the requirements of clause 6.1(d), Software may contain or be provided with components that are subject to the terms and conditions of “open source” software licences (“**Open Source Software**”). If Customer’s use of the Software subjects Customer to the terms of any licence governing the use of Open Source Software, then information concerning such Open Source Software and the applicable licence must be incorporated or referenced in the AWS Marketplace Listing or Documentation. To the extent required by the licence to which the Open Source Software is subject, the terms of such licence will apply in lieu of the terms of the Agreement with respect to such Open Source Software, including without limitation, any provisions governing attribution, access to source code, modification and reverse-engineering.
- 3.7 No shrink-wrap, click-acceptance or other terms and conditions outside the Agreement provided with any Licensed Materials or any part thereof (“**Additional Terms**”) will be binding on Customer 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 Customer in their entirety. For clarity, the Software, fee structure, technical requirements for use of the Software, Support Services, as well as any information regarding Open Source Software specified or referenced in the AWS Marketplace Listing or Documentation, are not Additional Terms subject to this clause.
- 3.8 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**”). Customer will not use the Software for High Risk Activities.

4. Services

- 4.1 Nuvens will provide sufficient Documentation to allow a reasonably competent user to access and use the Software, and Nuvens will provide Support Services to Customer in accordance with the support plan described or incorporated into the AWS Marketplace Listing.

5. Intellectual Property Rights

- 5.1 Subject to the licences granted herein, Nuvens will retain all right, title and interest it may have in and to the Licensed Materials, including all Intellectual Property Rights therein. Nothing in the Agreement will be construed or interpreted as granting to Customer any rights of ownership or any other intellectual or proprietary rights in or to the Licensed Materials.

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

6. Warranties.

- 6.1 Nuvens represents and warrants that: (a) the Software and the AMI Image will conform, in all material respects, to the Documentation during the Warranty Period; (b) Software will not contain any automatic shut-down, lockout, "time bomb" or similar mechanisms that could interfere with Customer's exercise of its rights under the Agreement (for clarity, the foregoing does not prohibit licence keys that expire at the end of the Licence); (c) Nuvens will use industry standard practices designed to detect and protect the Software against any viruses, "Trojan horses", "worms", spyware, adware or other harmful code designed or used for unauthorised access to or use, disclosure, modification or destruction of information within the Software or interference with or harm to the operation of the Software or any systems, networks or data, including as applicable using anti-malware software and keeping the anti-malware software up to date prior to making the Software (including any Software provided through Support Services) available to Customer; (d) the Software, and Customer's use thereof as permitted under the Agreement, will not be subject to any licence or other terms that require that any Customer Data, Customer Materials or any software, documentation, information or other materials integrated, networked or used by Customer 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; and (e) the Software and the AMI Image will conform, to the extent applicable, with then-current Web Content Accessibility Guidelines (WCAG) and any other applicable accessibility Laws.
- 6.2 Nuvens represents and warrants that the Services will be performed in a professional manner with a level of care, skill and diligence performed by experienced and knowledgeable professionals in the performance of similar services.
- 6.3 If any Software or Service fails to conform to the foregoing warranties, Nuvens promptly will, at its option and expense, correct the Software and re-perform the Services as necessary to conform to the warranties. If Nuvens 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 Customer's sole remedy and Nuvens' exclusive liability (except as provided in clause 9), Customer may terminate the Licence and the Agreement without further liability and Nuvens will provide Customer with a refund of any fees prepaid to Nuvens by Customer, prorated for the unused portion of the Licence, as well as, if applicable, any service credits available under Nuvens' Support Services or other policies.
- 6.4 Nuvens will have no liability or obligation with respect to any warranty to the extent attributable to any: (a) use of the Software by Customer in breach of the Agreement or applicable Law; (b) unauthorised modifications to the Licensed Materials made by Customer or its Personnel; (c) use of the Software in combination with third-party equipment or software not provided or made accessible by Nuvens or contemplated by the AWS Marketplace Listing or Documentation; or (d) use by Customer of Software in conflict with the Documentation, to the extent that such nonconformity would not have occurred absent such use or modification by Customer.
- 6.5 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 the Agreement.

- 6.6 Each Party represents and warrants that: (a) it has full power and authority to enter in and perform the Agreement and that the execution and delivery of the Agreement has been duly authorised; and (b) the Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or breach any obligation owed by such Party to any third party.
- 6.7 Except for the warranties specified in the 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 non-infringement. Nuvens does not warrant: (a) that the Licensed Materials will meet Customer's requirements; or (b) that the operation of the Software will be uninterrupted or error free.

7. Confidentiality

- 7.1 **"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 the 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 the Agreement and without use of or reference to the Disclosing Party's Confidential Information or Intellectual Property Rights. Except for rights expressly granted in the Agreement, each Party reserves all rights in and to its Confidential Information. The Parties agree that the Licensed Materials are Confidential Information of Nuvens.
- 7.2 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 clause 7. Except as necessary for the proper use of the Software, the exercise of a Party's rights under the Agreement, performance of a Party's obligations under the Agreement or as otherwise permitted under the Agreement, neither Party will use Confidential Information of the other Party for any purpose except in fulfilling its obligations or exercising its rights under the 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.

- 7.3 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.
- 7.4 Customer and Nuvens may agree that a separate nondisclosure agreement between Customer and Nuvens (or the respective Affiliates of Customer and Nuvens) ("**NDA**") will apply to the Licence, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of clauses 7.1 – 7.3.

8. Limitations and exclusions of liability

- 8.1 Nothing in the Agreement will limit or exclude:
- (a) any liability for fraud or fraudulent misrepresentation; or
 - (b) any liability in any way that is not permitted under applicable law; or
 - (c) a Party's liability under the indemnities set out in clause 9.
- 8.2 Neither Party shall be liable to the other Party in respect of any special, indirect or consequential loss or damage.
- 8.3 Subject to clauses 8.1 and 8.2, the liability of each Party to the other Party under the Agreement in respect of any event or series of related events shall not exceed the higher of (i) the total amount paid and payable by the Customer to Nuvens under the Agreement in the 12-month period preceding the commencement of the event or events or (ii) US\$50,000.

9. Indemnities

- 9.1 Nuvens will, at its expense, indemnify, defend and hold harmless Customer and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Customer 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 of the infringement, misappropriation or breach of any Intellectual Property Rights by the Licensed Materials or Customer's use thereof as permitted under the Agreement.
- 9.2 Customer will, at its expense, indemnify, defend and hold harmless Nuvens and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Nuvens 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) to the extent arising out of or relating to an allegation of infringement, misappropriation or breach of any Intellectual Property Rights by the Customer Materials or Customer Data or Nuvens' use thereof as permitted under the Agreement.

- 9.3 The party(ies) seeking indemnification pursuant to this clause 9 (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 defence 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 defence at its own expense. The Indemnifying Party will control the defence 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 clause 9; (iii) imposes any non-monetary obligations on any Indemnified 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.
- 9.4 In addition to Nuvens’ obligations under clause 9.1, if the Software or other Licensed Materials is held, or in Nuvens’ opinion is likely to be held, to infringe, misappropriate or breach any Intellectual Property Rights, or, if based on any claimed infringement, misappropriation or breach of Intellectual Property Rights, an injunction is obtained, or in Nuvens’ opinion an injunction is likely to be obtained, that would prohibit or interfere with Customer’s use of the Licensed Materials under the Agreement, then Nuvens will at its option and expense either: (a) procure for Customer the right to continue using the affected Licensed Materials in accordance with the licence granted under the 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 breach any third-party Intellectual Property Rights. If, in such circumstances, Nuvens cannot not successfully accomplish any of the foregoing actions on a commercially reasonable basis, Nuvens will notify Customer and either Party may terminate the Licence and the Agreement, in which case Nuvens will refund to Customer any fees prepaid to Nuvens by Customer prorated for the unused portion of the Licence. For clarity, Nuvens’ indemnification and defence obligations under this clause include infringement Claims based on use of the Licensed Materials by Customer Indemnified Parties following an initial infringement Claim except that, if Nuvens responds to an infringement Claim by accomplishing the solution in (b), Nuvens will have no obligation to defend and indemnify Customer for infringement Claims arising from Customer’s use after the accomplishment of (b) of the infringing Licensed Materials for which Nuvens provided modified or replacement Licensed Materials.
- 9.5 Nuvens will have no liability or obligation under this clause 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Licensed Materials not provided by Nuvens or its Personnel; (b) use of the Software in combination with third-party equipment or software not provided or made accessible by Nuvens or not specifically referenced for use with the Licensed Materials by the AWS Marketplace Listing or Documentation; or (c) use of the Licensed Materials by Customer in breach of the Agreement. Nuvens’ liability under this clause 9 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 Nuvens or specifically referenced by the AWS Marketplace Listing or Documentation is limited to Nuvens’ proportional share of defence 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 Nuvens would be responsible for a 25% share of the defence and indemnity obligations).

- 9.6 Customer will have no liability or obligation under this clause 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Customer Materials or Customer Data not provided by Customer or its Personnel; or (b) use of the Customer Materials or Customer Data by Nuvens in breach of the Agreement.
- 9.7 This clause 9 states the entire liability of Nuvens with respect to infringement, misappropriation or breach of Intellectual Property Rights of third parties by any Licensed Materials or any part thereof or by any use thereof by Customer, and this clause 9 states the entire liability of Customer with respect to infringement, misappropriation or breach of Intellectual Property Rights of third parties by any Customer Materials, Customer Data or any part thereof or by any use, receipt, storage or processing thereof by Nuvens.
- 9.8 The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by a Party.

10. Term and Termination

- 10.1 The Agreement will continue in full force and effect until: (a) in the case of a fixed-duration trial, the expiry of such trial or (b) the Agreement is terminated by either Party as provided by the Agreement.
- 10.2 Either Party may terminate the Licence or the Agreement at any time by giving 30 days' prior notice to the other Party. Customer will pay for all Software usage up to the time of termination.
- 10.3 Either Party may terminate the Licence or the Agreement if the other Party materially breaches the Agreement and does not remedy the breach within 30 days following its receipt of written notice of the breach from the non-breaching Party.
- 10.4 Upon termination or expiration of the Licence or the Agreement, Customer's right to use the Software licensed under such Licence will terminate, and Customer's access to the Software and Service provided under such Licence may be disabled and discontinued. Termination or expiration of any Licence purchased by Customer from Nuvens will not terminate or modify any other Licence purchased by Customer from Nuvens.
- 10.5 Clauses 1 (Definitions and interpretation), 5 (Intellectual Property Rights), 7 (Confidentiality), 8 (Limitations of Liability), 9 (Indemnities), 10.4 (Effect of Termination), 11 (Insurance) and 12 (General) and any perpetual licence granted under the Agreement, together with all other provisions of the Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of the Agreement for any reason.

11. Insurance

- 11.1 Each Party will obtain and maintain appropriate insurance necessary for implementing and performing under the Agreement in accordance with applicable Law and in accordance with the requirements of this clause 11. Nuvens will at its own cost and expense, acquire and continuously maintain the following insurances during the term of the Agreement and for one year after:
 - (a) Public Liability insurance, with a limit of GBP 1,000,000 for each and every claim or loss;

- (b) Employer's Liability insurance with a limit of GBP 5,000,000 ; and
 - (c) Professional Indemnity insurance with a limit of £5,000,000.
- 11.2 Prior to execution of the Agreement and annually thereafter during the term, Customer may request that Nuvens provides Customer with evidence of the insurances specified in clause 11.1. The limits of cover specified in clause 11.1 will not be construed as a limitation of any potential liability to Customer, and failure to request evidence of this insurance will not be construed as a waiver of Nuvens' obligation to provide the insurance cover specified.

12. General

- 12.1 Governing Law. The Agreement and all disputes or claims arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Any disputes relating to the Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England.
- 12.2 Assignment. Neither Party may assign or transfer the 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 the 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 AWS Marketplace 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 breach of this clause will be null and void. The Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.
- 12.3 Divestiture. If Customer divests a portion of its business to one or more organisations that are not Affiliates of Customer, or if an entity ceases to be an Affiliate of Customer (such divested business unit or such entity, a "**Divested Affiliate**"), Nuvens agrees to allow such Divested Affiliate to continue to use the Software, and Customer may elect that (a) such Divested Affiliate continue, as if it were a Customer Affiliate, to use the Software under Customer's AWS Marketplace account for the remainder of the Licence, or (b) such Divested Affiliate may obtain its own Licence to the Software for a period of 90 days after the effective date of such divestiture under the same terms and conditions as the Agreement and the same pricing as specified in the AWS Marketplace Listing. Use by a Divested Affiliate after the conclusion of the Licence or 90-day period, as applicable, will require a separately purchased subscription from Nuvens through an AWS Marketplace account of that Divested Affiliate or its then-current Affiliates.
- 12.4 Entire Agreement. The 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. The Agreement is solely between Customer and Nuvens. Neither Amazon Web Services, Inc. nor any of its Affiliates are a party to the Agreement and none of them will have any liability or obligations hereunder. The terms and conditions of the 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. Neither Party will be bound by, and each expressly rejects, any provision that is different from or in addition to the 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.
- 12.5 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 (a “**Force Majeure Event**”). A Force Majeure Event will not excuse or suspend Nuvens’ obligation to invoke and follow its Business Continuity Plan in a timely fashion, and to the extent that such Business Continuity Plan was designed to cover the specific force majeure, or events caused by the Force Majeure Event, the foregoing will excuse Nuvens’ performance under the Agreement only for the period of time from the occurrence of the Force Majeure Event until Nuvens invokes its Business Continuity Plan.

- 12.6 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 Customer, where Customer or its Users use the Software or Services, and in the case of Nuvens, where Nuvens 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 Customer Data to any country subject to an embargo or other sanction by the United States.
- 12.7 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 the Agreement and will be prohibited except to the extent expressly permitted by the terms of the Agreement.
- 12.8 Headings. The headings throughout the 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 the Agreement.
- 12.9 No Third-Party Beneficiaries. Except as specified in clause 9 with respect to Customer Indemnified Parties and Nuvens Indemnified Parties, nothing express or implied in the 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.
- 12.10 Notices. To be effective, notice under the Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with the Agreement. Each Party agrees that it may receive notices from the other Party regarding the Agreement: (a) by email to the email address designated by such Party as a notice address for the purposes of the Agreement; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognised courier service. Notice will be deemed given upon written verification of receipt.
- 12.11 Nonwaiver. Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under the Agreement will not be deemed a waiver of any such right, power or privilege under the Agreement. No waiver by either Party of a breach of any term, provision or condition of the 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.

- 12.12 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.
- 12.13 Relationship of Parties. The relationship of the Parties will be that of independent contractors, and nothing contained in the Agreement will create or imply an agency relationship between Customer and Nuvens, nor will the Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee between Customer and Nuvens. 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.
- 12.14 Severability. If any term or condition of the Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.
- 12.15 Subcontracting. Nuvens may use Subcontractors in its performance under the Agreement, provided that: (a) Nuvens remains responsible for all its duties and obligations hereunder and the use of any Subcontractor will not relieve or reduce any liability of Nuvens or cause any loss of warranty under the Agreement; and (b) Nuvens 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 Nuvens such that a breach by a Subcontractor of the provisions of the Agreement will be deemed to be a breach by Nuvens. The performance of any act or omission under the Agreement by a Subcontractor for, by or through Nuvens will be deemed the act or omission of Nuvens. Upon request, Nuvens will identify to Customer any Subcontractors performing under the Agreement, including any that have access to Customer Data, and such other information reasonably requested by Customer about such subcontracting.