

# End User License Agreement for MidVision Cloud

MIDVISION LIMITED

MIDVISION CLOUD ON AMAZON WEB SERVICES

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### 1. Definitions.

- 1.1. "**MidVision**" or "**Licensor**" means MidVision Limited, a company registered in England and Wales.
- 1.2. "**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**.
- 1.3. "**AWS Marketplace**" means the software marketplace operated by Amazon Web Services, Inc. located at <https://aws.amazon.com/marketplace/> as it may be updated from time to time.
- 1.4. "**Amazon**" means Amazon.com, Inc., 1200 12th Avenue South, Suite 1200, Seattle, Washington 98144.
- 1.5. "**Amazon Machine Image**" or "**AMI**" means virtual machine images containing software applications, libraries, data and associated configuration settings as made available on **AWS** and being a way that the **Software** offered under this **Agreement** 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** containing the **Software** under **Buyer's** own **AWS Services** account on **AWS** Services infrastructure.

- 1.6. "**AWS**" means the Amazon Web Services comprising a virtual computing environment including, without limitation, one (1) or more **AMIs** and the "Amazon Elastic Compute Cloud", as defined at <http://aws.amazon.com/ec2>.
- 1.7. "**Amazon Web Services Account**" means the **Licensee's AWS** account registered on Amazon.com used to launch **AMI** instances, store and transfer data, run applications and receive billing.
- 1.8. "**Authorized Users**" 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**.
- 1.9. "**Midvision-Cloud**" or "**Software**" means MidVision Cloud software pre-installed as an **AMI** that can be run only on the **AWS** environment licensed on a **Metered Pricing** or **Entitlement Pricing** basis, and consisting of "**Third Party Software**" and "**Value Add Components**" and 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**.
- 1.10. "**AWS Services**" means the cloud computing services offered by Amazon Web Services, Inc. as they may be updated from time to time.
- 1.11. "**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**.
- 1.12. "**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.
- 1.13. "**Contractor**" means any third party contractor of **Buyer** or other third party performing services for **Buyer**, including outsourcing suppliers.
- 1.14. "**Documentation**" means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, "read-me" files, Notices 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 **Licensor** publishes or provides under this **Agreement**.

- 1.15. “**Entitlement Pricing**” means any pricing model for **AMI Software Subscriptions** where **Buyer** purchases a quantity of usage upfront, include prepaid and instalment payment pricing models.
- 1.16. “**Licensed Materials**” means the **Software, Documentation** and any other items, materials or deliverables that **Licensor** provides, or is obligated to provide, under this **Agreement**.
- 1.17. “**Metered Pricing**” means any pricing model for **AMI Software Subscriptions** where **Buyer** pays as it goes based on the quantity of its usage of the **Software**.
- 1.18. “**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**).
- 1.19. “**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.
- 1.20. “**Services**” means all services and tasks that **Licensor** provides, or is obligated to provide, under this **Agreement**, including without limitation **Support Services**.
- 1.21. “**Sample Application Code**” means the sample software code, application programming interface, header files and related information, and the file format specifications, if any, included as part of the **Software** as described in the **Documentation** or a “Read Me” file accompanying the applicable **Software**.
- 1.22. “**AWS Marketplace 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 **Agreement**, including **Licensor’s** policies and procedures referenced or incorporated in the detail page.
- 1.23. “**Subcontractor**” means any third party subcontractor or other third party to whom **Licensor** delegates any of its duties and obligations under this **Agreement**.
- 1.24. “**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 **AWS Marketplace Listing**.
- 1.25. “**Support Services**” means the support and maintenance services for the **Software** that **Licensor** provides, or is obligated to provide, as described in the **AWS Marketplace Listing**.
- 1.26. “**Value-Add Components**” means the **MidVision** software (including MidVision RapidDeploy), patch management, remote access management,

asset management, application integration, or other services that **MidVision** provides, which together with the **Third Party Software**, forms the **Software**.

## 2. Scope.

- 2.1. **Terms and Conditions.** This **Agreement** for AWS Marketplace (the "**Agreement**") sets forth the terms and conditions applicable to the licensing of **Software** from the licensor ("**MidVision**" or "**Licensor**") by the **Party** subscribing to the **Software** ("**Buyer**" or "**Licensee**") through the **AWS Marketplace**, deployed via **AMI** via an **AWS Marketplace Listing**. The offer of the **Software** as an **AWS Marketplace 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 **Agreement** and their entry into this **Agreement** (defined below). Unless defined elsewhere in this **Agreement**, terms in initial capital letters have the meanings set forth in Section 1 (Definitions). **Buyer** and **Licensor** may be referred to collectively as the "**Parties**" or individually as a "**Party**".
- 2.2. **Software Subscription.** **Buyer** will subscribe to a **Subscription** as set forth in the **AWS Marketplace 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 **AWS Marketplace Listing**, may be for **Software** deployed via **AMI** ("**AMI Software**") or **Software** deployed via **SaaS** ("**SaaS Software**"). **Software** may be targeted for specific geographic regions, and **Support Services** may vary by geography as set forth in the applicable **AWS Marketplace Listing**. A **Subscription** may be provided on a **Metered Pricing**, **Entitlement Pricing** or other basis through the functionality available through **AWS Services**. The fee or rate for the **Subscription** is set forth in the applicable **AWS Marketplace Listing**. For **Subscriptions** provided on a **Metered Pricing** basis, upon request by **Buyer**, **Licensor** will provide sufficient documentation from its books and records to allow **Buyer** to verify the metered usage charged to **Buyer** for the **Subscription**.
- 2.3. **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. Upon request, **Buyer** will provide such information to **Licensor** as reasonably required to determine whether **Licensor** is obligated to collect **Taxes** from **Buyer**.

2.4. **Agreement.** Each **Subscription** is subject to and governed by this **Agreement**, 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 **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) the NDA (if any); (c) this **Agreement**; and (d) the **AWS Marketplace Listing**.

### 3. License.

#### 3.1. Licensed Materials

3.1.1. **Licensor** hereby grants to **Buyer**, subject to Section 3.1.2, a non exclusive, worldwide (subject to Section 3.5.6), non transferable (except in connection with an assignment permitted under Section 11.8 or a divestiture permitted under Section 11.9), non-terminable (except as provided in Section 13) 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 in accordance with the applicable **AWS Marketplace Listing** and for the purposes described in the **Documentation** and to allow its **Authorized Users** to access and use the **AMI Software** and **AMI Image** as so deployed.

3.1.2. **Buyer** may use the **Software** and, as applicable, 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 **Authorized Users**.

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

3.1.4. **Sample Application Code.** **Licensee’s Authorized Users** may install, modify and use the **Sample Application Code** solely for purposes of facilitating use of validly licensed **Software** in accordance with this **Agreement**. **Licensee** may modify the **Sample Application Code** solely for the purposes of designing, developing and testing **Licensee’s** own software applications. However, **Licensee** is permitted to use, copy and redistribute its modified **Sample Application Code** only if all of the following conditions are met: (a) **Licensee** includes **MidVision’s** copyright notice (if any) with **Licensee’s** application, including every location in which any other copyright notice appears in such application; and (b) **Licensee** does not otherwise use **MidVision’s** or any of its suppliers name, logos or other **MidVision** or any of

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- 3.2. **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**.
- 3.3. **Outsourcing.** **Licensee** may sublicense use of the **Software** to an **Authorized User** to operate the **Software** on **Licensee's** behalf, provided that: (a) **Licensee** provides **MidVision** with prior written notice; (b) **Licensee** is responsible for ensuring that any such **Authorized User** agrees to abide by and fully complies with the terms of this **Agreement** as they relate to the use of the **Software** on the same basis as applies to **Licensee**; (c) such use is only in relation to **Licensee's** direct beneficial business purposes as restricted herein; (d) such use does not represent or constitute an increase in the scope or number of licenses provided hereunder; and (e) **Licensee** shall remain fully liable for any and all acts or omissions by the **Authorized User** related to this **Agreement**.
- 3.4. **Delivery.** The **Software** shall be made available solely via the **AMI**.
- 3.5. **Restrictions.**
- 3.5.1. **Limited Modifications, No Reverse Engineering.** **Licensee** shall not modify, port, adapt or translate the **Software**. **Licensee** shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the **Software**. For the avoidance of doubt, **Licensee** is permitted to use and modify the **AMI** ("**Modified AMI**") in accordance with the **AWS** terms of service, and save the **Modified AMI**, including the **Software** only in the **Licensee's Amazon Web Services Account**. However any **Modified AMI** may only be used and/or stored within **AWS**, as may be permitted under the **AWS** terms of service.
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- 3.5.5. **License Limit. Licensee** shall only use the **Software** within their **Amazon Web Services Account** and only as allowed by the **Licensee's** designated instance type.
- 3.5.6. **Export Rules. Licensee** acknowledges that the **Software** is subject to the U.S. Export Administration Regulations and other export laws, restrictions, and regulations (collectively, the "**Export Laws**") and that **Licensee** will comply with the **Export Laws**. **Licensee** will not ship, transfer, export, or re-export the **Software**, directly or indirectly, to: (a) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria) (each, an "**Embargoed Country**"), (b) any end user whom **Licensee** knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems (each, a "**Prohibited Use**"), or (c) any end user who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government (each, a "**Sanctioned Party**"). In addition, **Licensee** is responsible for complying with any local laws in its jurisdiction which may impact **Licensee's** right to import, export or use the **Software**. **Licensee** represents and warrants that (i) it is not a citizen of, or located within, an **Embargoed Country**, (ii) it will not use the **Software** for a **Prohibited Use**, and (iii) it is not a **Sanctioned Party**. All rights to use the **Software** are granted on condition that such rights are forfeited if **Licensee** fails to comply with the terms of this **Agreement**.
- 3.5.7. In the event that **Licensee** fails to comply with this **Agreement**, **MidVision** may terminate the license and **Licensee** must destroy all copies

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3.5.8. The **Software** shall only be used together with the **Value Add Components** and **Licensee** shall make substantial use of the **Value Add Components** when using the **Software**.

3.6. **Open Source Software.** The **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**, then information concerning such **Open Source Software** and the applicable license must be incorporated or referenced in the **AWS Marketplace Listing** or **Documentation**. 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.

3.7. **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**.

#### 4. Services & Support.

4.1. **Licensor**, its **Affiliates** or **Third Party Suppliers** will provide sufficient **Documentation** to allow a reasonably competent user to access and use the **Software**, and **Licensor** will provide **Support Services** to **Buyer** in accordance with the support plan set forth or incorporated into the **AWS Marketplace Listing**.

4.2. **Licensee** shall be entitled to ‘standard’ web based support from **MidVision** for the **Software** as described at <https://www.midvisioncloud.com/support-services/support-slides/>. For the avoidance of doubt, **MidVision** has no liability and provides no support for the hardware or any **AWS services** provided by **Amazon**.

#### 5. Intellectual Property Rights.

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## 6. Updates.

All upgrades and updates are provided to **Licensee** at **MidVision's** sole discretion and are subject to the terms of this **Agreement** on a license exchange basis. **Licensee** agrees that by using an upgrade or update **Licensee** voluntarily terminates **Licensee's** right to use any previous version of the **Software**. As an exception, **Licensee** may maintain installations of previous versions of the **Software** on **AWS** for a reasonable period of time (but not to exceeding ninety (90) days) after **Licensee** obtains the upgrade or update to assist **Licensee** in the transition to the upgrade or update, provided that **Licensee's** right to such simultaneous installations does not constitute an increase in the number of copies, licensed amounts or scope of use granted to **Licensee** hereunder. Any obligations that **MidVision** may have to support previous versions during the license term may end upon the availability of this update. Upgrades and updates may be licensed to **Licensee** by **MidVision** with additional or different terms.

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#### 9. Confidentiality.

- 9.1. **Confidential Information.** “**Confidential Information**” means any non public 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 are Confidential Information of Licensor**.
- 9.2. **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 9. 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.
- 9.3. **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.

9.4. **NDA.** **Buyer** and **Licensor** may agree that a separate nondisclosure agreement between **Buyer** and **Licensor** (or the respective **Affiliates** of **Buyer** and **Licensor**) ("**NDA**") will apply to the **Subscription**, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 9.1 through 9.3 of this Section 9.

## 10. Governing Law.

This **Agreement**, each **Subscription** entered into hereunder, and all matters arising from or related to this **Agreement** (including its validity and interpretation), will be governed and enforced by and construed in accordance with the substantive laws in force in England and Wales. The respective courts of England shall have exclusive jurisdiction over all disputes relating to this **Agreement**. Notwithstanding any provision in this agreement, **MidVision** or **Buyer** may request any judicial, administrative, or other authority to order any provisional or conservatory measure, including injunctive relief, specific performance, or other equitable relief, prior to the institution of legal or arbitration proceedings, or during the proceedings, for the preservation of its rights and interests or to enforce specific terms that are suitable for provisional remedies. This **Agreement** will not be governed by the following, the application of which is hereby expressly excluded: (x) the conflict of law rules of any jurisdiction, (y) the United Nations Convention on Contracts for the International Sale of Goods, and (z) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction.

## 11. General Provisions.

- 11.1. **Severability.** If any part of this **Agreement** is found void and unenforceable, it will not affect the validity of the balance of this **Agreement**, which shall remain valid and enforceable according to its terms.
- 11.2. Updates and upgrades may be licensed to **Licensee** by **MidVision** with additional or different terms.
- 11.3. The English version of this **Agreement** shall be the version used when interpreting or construing this **Agreement**.
- 11.4. **Entire Agreement.** This is the entire agreement between **MidVision** and **Licensee** relating to the **Software** and it supersedes and extinguishes any prior representations, discussions, advertising, undertakings, communications or understandings between them whether written or oral relating to the **Software**.

- 11.5. **MidVision** may, from time-to-time modify this **Agreement** by posting a revised version on the **AWS Marketplace**, updating the EULA for the **AWS Marketplace Listing** or by otherwise notifying **Licensee** via email.
- 11.6. **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**.
- 11.7. **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.
- 11.8. **Assignment.** This **Agreement** and any rights or obligations hereunder shall not be assigned or transferred in whole or in part by either **Party** without the prior written consent of the other **Party**. Any purported assignment or transfer will be null and void. 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 **AWS Marketplace Listing** or the assigning **Party's** entire business, whether by sale of assets, sale of stock, merger or otherwise. This **Agreement** will inure to the benefit of the **Parties** hereto and their permitted successors and assigns.
- 11.9. **Divestiture.** If **Buyer** divests a portion of its business to one or more organizations that are not **Affiliates** of **Buyer**, or if an entity ceases to be an **Affiliate** of **Buyer** (such divested business unit or such entity, a "**Divested Affiliate**"), **Licensor** agrees to allow such **Divested Affiliate** to continue to use the **Software**, and **Buyer** may elect that (a) such **Divested Affiliate** continue, as if it were a **Buyer Affiliate**, to use the **Software** under **Buyer's AWS Marketplace** account for the remainder of the Subscription, or (b) such **Divested Affiliate** may obtain its own **Subscription** to the **Software** for a period of 90 days after the effective date of such divestiture under the same terms and conditions as this **Agreement** and the same pricing as set forth in the **AWS Marketplace Listing**. Use by a **Divested Affiliate** after the conclusion of the **Subscription** or 90 day period, as applicable, will require a separately purchased subscription from **Licensor** through an **AWS Marketplace** account of that **Divested Affiliate** or its then-current **Affiliates**.
- 11.10. **Force Majeure.** Neither **Party** will have any liability under or be deemed to be in breach of this **Agreement** for any delays or failures in performance of this **Agreement** which result from circumstances beyond the reasonable control of the **Party** affected. Each **Party** will promptly notify the other **Party** in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than one month, either **Party** may terminate this contract by written notice to the other **Party**.

- 11.11. **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**.
- 11.12. **Waiver.** Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this **Agreement** will be valid only if it is communicated to the other **Party** in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of this contract.
- 11.13. **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.
- 11.14. **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**.
- 11.15. **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 **Agreement**; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Any such **Notice** shall be deemed to have been received if delivered personally, at the time of delivery or in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting or in the case of fax, at the time of transmission or in the case of email, when sent unless an error message is received.
- 11.16. **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 request, **Licensor** will identify to **Buyer** any **Subcontractors** performing under this **Agreement**, and such other information reasonably requested by **Buyer** about such subcontracting.

11.17. **Cumulative Rights.** The rights, powers, privileges and remedies provided in this **Agreement** are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

## 12. Notice to U.S. Government End Users.

12.1. **Commercial Items.** The Software and Documentation are “Commercial Item(s),” as that term is defined at 48 C.F.R. Section 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. Section 12.212 or 48 C.F.R. Section 227.7202, as applicable. Consistent with 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202 1 through 227.7202 4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United Kingdom. MidVision.

12.2. **U.S. Government Licensing of MidVision Technology.** Licensee agrees that when licensing MidVision Software for acquisition by the U.S. Government, or any contractor therefore, Licensee will license consistent with the policies set forth in 48 C.F.R. Section 12.212 (for civilian agencies) and 48 C.F.R. Sections 227 7202 1 and 227 7202 4 (for the Department of Defense). For U.S. Government End Users, MidVision agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 C.F.R. Parts 60 1 through 60 60, 60 250, and 60 741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference in this Agreement.

## 13. Term and Termination.

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

13.2. **Termination for Convenience.** **Buyer** may terminate the **Subscription** or this **Agreement** without cause at any time upon notice to **Licensor** 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**.

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

13.4. **MidVision** reserves the right, in its sole discretion, to change, cease to provide or discontinue support for the **Software** at any time.

13.4.1. In the event that **MidVision** opts to discontinue support for the **Software**, **MidVision** shall provide **Licensee** with 90 days prior notice.

13.4.2. In the event that **MidVision** opts to cease to provide the **Software** pertaining to a **Subscription**, **MidVision** shall notify the **Licensee**, whereupon **Licensee** shall, within 90 days of receipt of such notice, discontinue its use of the **Software** and terminate its **Subscriptions** to the **AWS Marketplace Listings** containing the **Software**.

13.4.3. If the **Licensee** has an active **Subscription** using an **Entitlement Pricing** model, **Licensor** shall only cease to provide the **Software** where an exceptional circumstance results in **Licensor's** inability to list the **Software** on **AWS**. In this circumstance, **Licensee** shall be entitled to a refund of any prepaid but unused usage.

13.5. Effect of Termination.

13.5.1. 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 **Services** 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**.

13.5.2. The following Sections shall survive termination of this **Agreement**: 1 (Definitions), 5 (Intellectual Property Rights), 7 (No Warranty), 8 (Limitation of Liability), 10 (Governing Law), 11 (General Provisions), 12 (Notice to U.S. Government End Users), and 13 (Term and Termination)..

14. Third-Party Beneficiary.

**Licensee** acknowledges and agrees that **MidVision's** licensors (and/or **MidVision** if **Licensee** obtained the **Software** from any party other than **MidVision**) are third party beneficiaries of this **Agreement**, with the right to enforce the obligations set forth herein with respect to the respective technology of such licensors and/or **MidVision**.

15. Third-Party Software.

The **Software** may contain third party software which requires notices and/or additional terms and conditions. Such required **Third Party Software** notices and/or additional terms and conditions are located at <https://www.midvisioncloud.com/eula-third-party/> (or a successor website thereto) and are made a part of and incorporated by reference into this **Agreement**.

16. Insurance.



16.1. **Coverages.** Each **Party** will obtain and maintain appropriate insurance necessary for implementing and performing under this **Agreement** in accordance with applicable Law and in accordance with the requirements of this Section 16. Under **Licensor's** right to self-insure, **Licensor** shall obtain and maintain at its own cost and expense the following insurances, with reputable UK insurers in respect of its obligations under this Agreement and for one year afterwards with a limit of indemnity in respect of any one occurrence or series of occurrences of not less than £1 million per year or more where required by law.

16.1.1. **Professional Indemnity.** Professional indemnity for information technology (also known as Errors and Omissions Insurance) of at least USD \$2,000,000

16.1.2. **Public & Product Liability.** Public and Products Liability Insurance of at least USD \$2,000,000

16.1.3. **Employers Liability.** Employers Liability Insurance of at least USD \$2,000,000

16.2. **Licensor** shall on **Licensee's** request, provide **Licensee** proof of such insurance policies.

## 17. Fraud And Corruption.

17.1. Each **Party** shall, and shall procure that its **Personnel** shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the requirements of the UK Bribery Act 2010 and any other applicable statute, rule or regulation in force from time to time that amends, appeals or replaces such act (the "**Bribery Act**");
- (b) notify the other **Party** immediately it becomes aware of any breach or suspected breach of this clause 17.
- (c) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the **Bribery Act**; and
- (d) ensure that all persons associated with the **Party** or other persons who are performing services in connection with this **Agreement** comply with this clause 17.

17.2. Breach of this clause 17 shall be deemed a material breach of this **Agreement**. In such case, or in case a **Party** has serious reason to believe that the other **Party** has been in breach of its obligations hereunder, the **Party** shall be entitled to terminate the **Agreement** with immediate effect without being in default.

## 18. Data Protection.

18.1. In this Section 18 the terms data processor, data subject, personal data and process shall have the meanings given to them in the UK Data Protection Act 2018 (the UK implementation of GDPR).

18.2. Each **Party** shall comply with the provisions of the UK Data Protection Act 2018 (and any other applicable statute, rule or regulation in force from time to time that amends, appeals or replaces such act) in relation to its use of any personal data concerning the other **Party**.

18.3. Where **MidVision** is processing personal data of the **Licensee** as a data processor:

- a) **MidVision** shall only act on instructions regarding the processing of personal data under this **Agreement**;
- b) **MidVision** shall ensure that appropriate technical and organisational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to (i) the harm that may result from breach of such measures and (ii) the nature of personal data to be protected; and
- c) **MidVision** shall comply with any reasonable request made from time to time by the **Licensee** to ensure compliance with the measures mentioned in this Section.

18.4. The **Licensee** hereby instructs the **Licensor** to carry out any processing of personal data reasonably necessary for the performance of this contract.

18.5. Each **Party** shall provide to the other **Party** full co-operation and assistance in allowing data subjects to access their rights under the Data Protection Act 2018 at no charge to the other **Party**.

## 19. Independence.

19.1. If either **Party** becomes aware of any circumstances existing or arising between them or with third parties, which could create a conflict of interest in their collective delivery of the **Software** or **Services** to the **Licensee** during the term of this **Agreement**, the **Party** shall notify the other **Party** thereof without undue delay.

19.2. The **Licensee** may lodge a request with the **Licensor** to be notified of any change of control or ownership of the **Licensor** or its **Affiliates** during the term of this **Agreement**. If such a request has been lodged with **Licensor**, **Licensor** shall immediately notify **Licensee** of any change or potential change in ownership interests in or control of the **Licensor** or the **Licensor's** owners that might arise during the course of this **Agreement** and that would cause a new owner to hold an ownership interest of more than 20%.

19.3. **Licensor** warrants, represents and undertakes that it is properly incorporated in the United Kingdom as a limited liability company (the "**Company**") and will remain so during the term of this **Agreement**.

If Licensee has any questions regarding this **Agreement** or if **Licensee** wishes to request any information from **MidVision** please use the address and contact information included with this product to contact the **MidVision** office serving the **Licensee's** jurisdiction.

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