

**Trilio Data, Inc.**  
**End User License Agreement**

**(Last Updated: March 1, 2024)**

This Trilio License Agreement (“**Agreement**”) is incorporated by reference into each order form, purchase order or other ordering document (“**Order(s)**” or “**Order Form**”), mutually agreed upon by Trilio Data, Inc. (“**Trilio**” or “**we**”) and the customer identified in the Order (“**Customer**” or “**you**”). Each such Order, together with this Agreement, shall constitute a separate agreement. Trilio shall provide Customer with the Software (as defined below) specified in an Order, at the agreed-upon fees specified in the Order (“**Fees**”), and subject to the terms and conditions set forth in this Agreement.

**If you are an individual, you may not purchase a license for use of the Software unless you contact Trilio directly and obtain permission.**

**IMPORTANT – PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ATTEMPTING TO USE THE SOFTWARE. THIS AGREEMENT CONSTITUTES A LEGALLY BINDING AGREEMENT BETWEEN THE COMPANY WHICH YOU REPRESENT AND ARE AUTHORIZED TO BIND AND TRILIO. BY SIGNING THIS AGREEMENT OR BY PURCHASING, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU ACKNOWLEDGE (1) THAT YOU HAVE READ THIS AGREEMENT, (2) THAT YOU UNDERSTAND IT, (3) THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE COMPANY YOU REPRESENT, AND (4) THAT YOU AGREE TO BE BOUND BY THIS AGREEMENT ON BEHALF OF THE COMPANY YOU REPRESENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, INCLUDING THE TERMS OF USE, YOU MUST NOTIFY TRILIO OF THIS "DECLINE" AND YOU MUST NOT INSTALL, USE, OR COPY THE SOFTWARE.**

This is a license agreement and not an agreement for sale.

**1. Definitions**

- 1.1. “**Authorized Reseller**” means a Trilio authorized reseller of the Software.
- 1.2. “**Customers End-User**” and “**Customer End-User Contract**” has the meaning assigned to that term in Section 13 (“**Indemnity**”)
- 1.3. “**Documentation**” means any specification and use documentation made available by Trilio to its end user customers generally about the Software or, if applicable, Professional Services.
- 1.4. “**Enhancements**” means, collectively, all new versions, service packs and maintenance releases, error corrections, enhancements, modifications, updates and bug fixes to the

Software and modifications to the Documentation created or delivered by Trilio. Enhancements specifically exclude any new Trilio releases or upgrades that contain new features and that Trilio markets separately.

- 1.5. **“Fees”** has the meaning given to such term in the first paragraph of this Agreement.
- 1.6. **“Feedback”** shall have the meaning assigned to such term in Section 15.
- 1.7. **“Force Majeure”** means a cause of any kind not reasonably within the control of a party, including, without limitation, acts of God and the public enemy, pandemics, sabotage, boycotts, disruptions of transportation facilities, inability to obtain supplies or materials, acts of government or its agencies, strikes, labor disputes, power disruptions, lockouts or any other industrial disturbance, or judicial action.
- 1.8. **“Order(s)” or “Order Form(s)”** has the meaning given to such term in the first paragraph of this Agreement.
- 1.9. **“Maintenance”** refers to the regular provision of updates and upgrades to the Software. This includes, but is not limited to, the maintenance releases, defect corrections, and enhancements. Maintenance does not encompass new versions of the Software or major upgrades involving substantial new features or functionality, which may be offered separately. The frequency and content the Maintenance is determined at the sole discretion of the Company.
- 1.10. **“Maintenance Period”** means the annual period during which Customer pays fees for Maintenance Services.
- 1.11. **“Maintenance Services”** means the annual Maintenance and Support Services.
- 1.12. **“Professional Services”** means installation, configuration, project management, training, consulting, and other services described in Section 5.
- 1.13. **“Software”** means (i) the Trilio software made available for a trial access or specified on the Order Form in object code and any Enhancement(s) provided by Trilio as part of the subscription license or during the Subscription Period whether in a hosted environment or otherwise; and (ii) any Documentation provided for the Software.
- 1.14. **“SOW”** means a Statement of Work signed by Trilio and Customer, which captures and defines the work activities, deliverables, and timeline for Professional Services provided by Trilio to Customer.
- 1.15. **“Subscription Period”** means the period specified in an Order Form during which the Customer has a valid subscription to the Software. “Subscription Period” includes the initial term as well as any renewal terms.

- 1.16. **“Support Services”** entails the provision of assistance and advice to Customer in relation to the troubleshooting of the Software. This includes responding to Customer inquiries, diagnosing issues, and offering solutions or workaround for problems encountered in the use of the Software for the Kubernetes or OpenStack vendor’s fully maintained and supported standard releases. Support Services are provided through designated channels such as telephone, email, or a web-based support portal and are available during the Company’s business hours described in Section 10. Installation and configuration of new versions of software are not included in Support Services and are a part of Trilio’s Professional Services offering.
- 1.17. **“Trilio Offerings”** has the meaning assigned to that term in Section 17 (**“Export Controls”**)
- 1.18. **“Trial Access”** has the meaning assigned to that term in Section 2.2 (**“Evaluation”**)
- 1.19. **“Revisions”** means any updates, upgrades, revisions, changes, alterations, modifications to the Software or the removal of certain features and/or functionality (including, but not limited to, specific components, versions, platforms, languages, etc.) from the Software included as part of the License.

## 2. Subscription License.

- 2.1. **License Grant.** Subject to the terms of this Agreement, your Order Form and any other applicable additional terms and in consideration of Customer’s payment of the license or subscription fees identified on the Order Form, Trilio hereby grants to you for the Subscription Period a limited, non-exclusive, non-transferable, revocable license to use the Software solely in connection with your internal operations. Your use of the Software shall be limited to the terms as specified in the Order Form.
- 2.2. **Evaluation.** If Customer’s access to the Software is for a proof of concept, trial or evaluation only (**“Trial Access”**), then the Subscription Period shall be thirty days, or the term specified in writing by Trilio. Customer may not utilize the same Trial Access for more than one trial or evaluation term in any twelve-month period, unless otherwise agreed to by Trilio. Notwithstanding any other provision of this Agreement, Trial Access is provided **“AS IS”** without warranty or support of any kind, express or implied. Trilio may terminate Customer’s Trial Access at any time for any reason and without liability of any kind.

### 2.3. VMWare Migration to OpenStack.

- 2.3.1. If Customer's Subscription to the Trilio OpenStack Software is specifically for VMware Migration to OpenStack, then Customer is strictly limited to utilizing only the functionality designated for migration purposes. Customer is explicitly prohibited from accessing or utilizing any other features or functionalities of the OpenStack Software.

**2.3.2.** If Customer's Subscription is for Trilio's OpenStack Backup and Recovery Software, then Customer is explicitly prohibited from accessing or utilizing functionalities of the VMWare Migration to OpenStack Software.

- 3. Change or Discontinuance.** You agree that Trilio may make Revisions to any or all of the Software included as part of a license at any time and shall not be liable to you whatsoever for such change. Trilio will only support the current release of its solution as well as the previous release of the Software (N-1).
- 4. Access Requirements.** Ongoing access to a Software requires: (a) a recurring internet connection to activate, renew, and validate the license, (b) the receipt by Trilio or a Trilio Authorized Reseller of recurring subscription payments, (c) your use of the Software in accordance with the Documentation. If Trilio and/or its Authorized Reseller do not receive the recurring subscription payment or cannot validate the license periodically, then the Software may become inactive without additional notice until Trilio receives the payment or validates the license.
- 5. Professional Services.** Trilio shall provide Professional Services if specified in an Order Form or an SOW. Trilio warrants that the Professional Services shall be performed in a professional and workmanlike manner. For any breach of this warranty, Trilio will use commercially reasonable efforts to reperform the Professional Services, provided that the Customer notifies Trilio in writing no later than fifteen (15) days after they are rendered. However, Trilio has no duty to incur costs for corrective reperformance that exceed Fees paid for the Professional Services being reperformed. If the foregoing remedy is not commercially practicable, Trilio may, in its sole discretion, refund to the Customer any prepaid Fees for the affected Professional Services. The remedies set out in this Section are the Customer's sole and exclusive remedies for breach of the warranties contained herein. Except as expressly provided for in this Section, Trilio hereby expressly disclaims any and all other representations, warranties or conditions with respect to the Professional Services, whether express, implied, statutory or otherwise, including, without limitation, the implied warranties of merchantability, non-infringement, title and fitness for a particular purpose. Trilio retains ownership of Trilio Offerings, including, but not limited to all information, software, and other property owned by it prior to this Agreement, which it develops independently of this Agreement, as well as work product compiled or developed by Trilio in the performance of the Professional Services. Trilio grants to Customer a non-exclusive license to use computer software or Documentation created or developed by Trilio in performing Professional Services to the same extent as, and in conjunction with using, the Software in accordance with this Agreement, and the Order Form.

## **6. General Restrictions on Use**

6.1. You shall not, and shall not allow any third party to:

6.1.1. redistribute, resell, transfer, rent, lease, or sublicense the Software;

6.1.2. decompile, "reverse-engineer", disassemble, or otherwise attempt to derive the source code for the Software, or underlying ideas, algorithms, file formats or

programming interfaces, except to the limited extent as is permitted by law notwithstanding contractual prohibition, and then only with prior written notice to Trilio;

- 6.1.3. use, copy, or install the Software other than as permitted according to your Order Form;
- 6.1.4. modify the Software or create any derivative work of the Software. Derivative works include but are not limited to translations. You may not alter any files or libraries in any portion of the Software;
- 6.1.5. copy any part of the Software except to the extent that licensed use inherently demands the creation of a temporary copy stored in computer memory and not permanently affixed on storage medium;
- 6.1.6. Provide access to a competitor or use the Software if you are a competitor of Trilio;
- 6.1.7. remove any product identification, proprietary, copyright or other notices contained in the Software (including any reports or data printed or exported from the Software);
- 6.1.8. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software;
- 6.1.9. use the Software for or on behalf of public cloud service providers;

**7. Responsibility for Access.** To the extent that Trilio provides you with serial numbers, access codes, entitlement numbers or a license to access the Trilio Offerings, including services or support, you are responsible for the security and use of such information, including that contained in the Documentation, therefore.

## **8. Term and Termination**

- 8.1. **Subscription Period.** The Subscription Period is as specified in your Order Form, provided, however that if no term is specified, the license term shall be one (1) year, automatically renewable, unless either party provides written notice of non-renewal sixty (60) days prior to the term's expiration.
- 8.2. **Termination.** Either party may terminate this Agreement or any Order Form: (i) immediately in the event of a material breach of this Agreement or any such Order Form by the other party that is not cured within thirty days of written notice thereof from the other party or, if such breach is incapable of cure, immediately upon written notice; or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty days of filing. All rights and obligations of the parties which by their nature are reasonably

intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Form.

**8.3. Effect of Termination.** Upon any expiration or termination, you must destroy all copies of the Software and any key codes associated with the same and all of its component parts and you must provide Trilio in writing your certification as to the same. Termination of this Agreement or an Order Form shall not relieve Customer of its obligation to pay all Fees that have accrued or have become payable by Customer hereunder.

**9. Audit & Retention of Records.** If requested by Trilio, no more than twice in any twelve-month period, Customer shall provide a certified audit report as to Customer's compliance with this Agreement. Customer shall promptly work with Trilio to remedy any underpayments that are discovered or find a mutually agreeable resolution. Customer shall retain the applicable records pertaining to its performance obligations for three (3) years after the termination or completion of such obligation.

## **10. Maintenance and Subscription Services**

**10.1. Period.** Subject to the terms and conditions of this Agreement and the Order Form, Trilio will provide Maintenance and Support Services described in this Section 10 for the duration of the Subscription Period.

**10.2. Coverage.** During the Subscription or Maintenance Period Trilio will (i) provide Enhancements to the Software that are generally made available to Trilio's subscription or maintenance and support customers and (ii) provide help desk support during Trilio's customer support department business hours (8 a.m. to 6 p.m. ET in the United States and 8 a.m. to 6 p.m. GMT in Europe, Monday through Friday excluding Trilio holidays) to address issues concerning use and performance of the Software. During the Subscription Period or Maintenance Period, Trilio will use reasonable efforts to correct significant programming errors and to repair or replace Software not performing substantially in accordance with the applicable user documentation of the current unaltered release of the Software in the form of Enhancements, as selected by Trilio, provided notice of such is received by Trilio. Trilio need not investigate or correct defects found by Trilio to be (i) in other than a current, unaltered Software release, or the release immediately preceding the most current release; (ii) caused by Customer's negligence or modification of the Software or its use in combination with software not provided or in an environment not supported by Trilio; (iii) caused by improper or unauthorized use of the Software; or (iv) due to external causes including hardware problems, power failure or electric power surges.

**10.3. Maintenance for Supported Releases.** During the Subscription or Maintenance Period, Trilio will maintain the current feature release\* of our Software along with one prior release supporting customer's supported platform. The prior release's maintenance is available for up to six (6) months after the then-current release which supports Customer's use of Kubernetes or OpenStack platform. After the six (6) month period, only bug fixes will be available for the current release.

For clarification, Trilio will exclusively offer fixes and service packs for the Kubernetes or OpenStack vendor's fully maintained and supported standard releases. We will continue to offer comprehensive support to customers who are current on their subscription or annual maintenance and support contract, irrespective of the software version they are using. Such customers may initiate support cases, seek clarification, report defects and more. However, note that service packs for feature releases older than the aforementioned criteria will not be available. In case the Customer requires fixes, an upgrade to the current release will be necessary.

\* A feature release is defined as any release that introduces new features, or support for new platforms.

**10.4. Customer Obligations.** To facilitate the receipt of Maintenance Services and as a condition to receiving them, Customer shall (i) appoint and identify up to two suitably experienced and knowledgeable personnel as a technical contact and alternate for Software maintenance and support issues, who are knowledgeable and competent in the use of the Software; (ii) update and maintain its installation of the Software to the then-current release level provided by Trilio, (iii) promptly notify Trilio's customer support department of software bugs or other problems requiring maintenance service; (iv) subject to Customer's reasonable security requirements, provide Trilio reasonable access and information regarding its systems utilizing the Software, including a connection to Customer's servers as requested by Trilio; and (v) delete or uninstall prior Software releases upon installation of a more current release, except for permitted archival copies.

**10.5. Notice of Discontinuance.** Customer shall notify Trilio that it intends to discontinue a Subscription Period or Maintenance Services not less than sixty (60) days prior to the commencement of any Subscription Period or Maintenance Period renewal. If a Customer exercises its right to discontinue a Subscription Period, upon expiry of the then Subscription Period, Customer cannot use the Software or access the Maintenance or Support Services. Prepaid Maintenance Services or subscription Fees, which shall be indicated in an Order Form or SOW, are nonrefundable.

**10.6. Unsupported Software Use.** Trilio will not provide technical support for products where unauthorized modifications to core code have been made by anyone other than a current Trilio employee. Any such changes are made at the Customer's own risk, and Trilio does not and cannot assume any liability for problems arising from those changes.

## Warranties and Warranty Disclaimers

**11.1.** Except with respect to Trial Access, Trilio warrants solely to you that the Software will perform substantially in accordance with the accompanying written materials for the Subscription Period. For any breach of this warranty, Trilio will use commercially reasonable efforts to repair or replace the affected Software. If the foregoing remedy is not commercially practicable, Trilio may, in its sole discretion, terminate the applicable Order Form and refund to Customer or its Authorized Reseller, as applicable, any prepaid Fees for the affected Software covering the remainder of the Subscription Period. The remedies set



out in this Section are the Customer's sole and exclusive remedies for breach of the warranties contained herein. Trilio makes no warranty that the Software will meet your requirements or operate under your specific conditions of use nor that your use of the Software will be uninterrupted or error free at all times and in all circumstances, nor that program errors will be corrected. YOU MUST DETERMINE WHETHER THE SOFTWARE MEETS YOUR REQUIREMENTS. YOU BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO THE FAILURE OF THE SOFTWARE TO MEET YOUR REQUIREMENTS. TRILIO WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE. This limited warranty shall not apply to any error or failure resulting from (i) machine error, (ii) failure to follow operating instructions, (iii) negligence or accident, or (iv) modifications to the Software by any person or entity other than Trilio. In the event of a breach of warranty, your sole and exclusive remedy and Trilio's sole and exclusive obligation, is repair of all or any portion of the Software. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 11, TRILIO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.2. THE SOFTWARE MAY CONTAIN "OPEN SOURCE" MATERIALS (E.G., ANY SOFTWARE SUBJECT TO OPEN SOURCE, COPYLEFT, GNU GENERAL PUBLIC LICENSE, LIBRARY GENERAL PUBLIC LICENSE, LESSER GENERAL PUBLIC LICENSE, MOZILLA LICENSE, BERKELEY SOFTWARE DISTRIBUTION LICENSE, OPEN-SOURCE INITIATIVE LICENSE, MIT, APACHE OR PUBLIC DOMAIN LICENSES, OR SIMILAR LICENSE). ANY OPEN-SOURCE MATERIALS THAT MAY BE DELIVERED BY TRILIO EMBEDDED IN OR IN ASSOCIATION WITH THE SOFTWARE IS PROVIDED PURSUANT TO THE OPEN-SOURCE LICENSE APPLICABLE TO THE SOFTWARE AND SUBJECT TO THE DISCLAIMERS AND LIMITATIONS ON LIABILITY SET FORTH IN SUCH LICENSE. AS REQUIRED BY THE COMMON PUBLIC LICENSE ("CPL"), IF A USER WISHES TO OBTAIN THE SOURCE CODE FOR THE COMPONENTS LICENSED UNDER THE CPL A USER MAY ACCESS THEM AT [HTTP://WIXTOOLSET.ORG](http://wixtoolset.org).<sup>[L]<sub>SEP</sub></sup> TRILIO MAKES NO WARRANTIES, AND SHALL HAVE NO LIABILITY, DIRECT OR INDIRECT, WHATSOEVER WITH RESPECT TO OPEN-SOURCE MATERIALS CONTAINED IN THE SOFTWARE.

## **12. Limitation of Remedies and Damages**

12.1. UNDER NO CIRCUMSTANCES SHALL TRILIO, ITS DIRECTORS, OFFICERS, EMPLOYEES, RESELLERS OR AGENTS BE LIABLE TO YOU OR ANY OTHER PARTY, INCLUDING, BUT NOT LIMITED TO YOUR AUTHORIZED END CUSTOMERS, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS OR LOSS OF BUSINESS) RESULTING FROM THIS AGREEMENT, OR ANY RELATED SOW, OR FROM THE FURNISHING,



PERFORMANCE, INSTALLATION, OR USE OF THE SOFTWARE OR PROFESSIONAL SERVICES, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, OR THE NEGLIGENCE OF TRILIO OR ANY OTHER PARTY, EVEN IF TRILIO IS ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT THE APPLICABLE JURISDICTION LIMITS TRILIO'S ABILITY TO DISCLAIM ANY IMPLIED WARRANTIES, THIS DISCLAIMER SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED.

12.2. EXCEPT WITH RESPECT TO TRIAL ACCESS OR ANY PRODUCT OR SERVICE IN BETA, IN ANY CASE, THE ENTIRE LIABILITY OF TRILIO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, RESELLERS OR AGENTS UNDER ANY PROVISION OF THIS AGREEMENT OR ANY SOW OR ORDER SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE LICENSE FEES PAID TO TRILIO HEREUNDER OVER A PERIOD OF TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH LIABILITY AROSE, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE ENTIRE LIABILITY OF TRILIO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, RESELLERS OR AGENTS UNDER THIS AGREEMENT RELATED TO TRIAL ACCESS OR ANY PRODUCT OR SERVICE IN BETA SHALL NOT EXCEED \$500, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT BE APPLICABLE. TRILIO IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY CUSTOMER OR A THIRD PARTY THAT IS ACCESSED THROUGH THE SOFTWARE AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT.

## 13. Indemnity

13.1. **Trilio Indemnity.** For Software licensed under this Agreement or an Order Form, Trilio shall defend you against any claim, demand, suit, or proceeding (each a “**Claim**”) made or brought against you by a third party to the extent alleging that the Software, or your use of the Software as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party, and Trilio shall indemnify you for any out-of-pocket damages, attorney fees, costs, judgments, and approved settlement payments, incurred in defending such Claim (collectively, “**Losses**”). The foregoing indemnity shall not apply if the infringement arises out of: (a) specifications or designs furnished by you and implemented by Trilio at your request; (b) the Software being modified by, combined with, added to, interconnected with or used with any equipment, apparatus, device, data, software or service not supplied or approved by Trilio in writing; (c) the modification to Software by any person or entity other than Trilio; (d) use of Software other than in accordance with its Documentation; or (e) use of any older release of the Software when use of a newer version would have avoided the alleged or actual infringement.

13.2. **Remedies.** If a Claim for which Customer is entitled to be indemnified under Section 13.1 above has occurred, or in Trilio’s opinion is likely to occur, Trilio shall, at Trilio’s expense,

do one of the following: (a) procure for Customer the right to continue using the affected Software; (b) replace with non-infringing alternates or modify the Software so that it becomes non-infringing, but its functionality after modification is substantially equivalent; or (c) accept the return of the affected Software, and refund to Customer or its Authorized Reseller the pro-rata portion of Fees that Customer or the Authorized Reseller actually paid to Trilio for the affected Software corresponding to periods following such termination. The collective obligations of Trilio pursuant to Section 13.1 and this Section (Section 13.2) are the sole and exclusive liability of Trilio, and Customer's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation.

**13.3. Customer Indemnity.** You agree to defend Trilio, its affiliates, officers, directors, employees, contractors, agents and resellers (the **"Trilio Parties"**) from and against any and all Claims made or brought against a Trilio Party by a third party that arise or result from (i) your breach of this Agreement, including, but not limited to your use of the Trilio Offerings in violation of this Agreement or any applicable law and (ii) allegations that software, content or data used by you in connection with the Trilio Offerings, infringes a third party's intellectual property right shall indemnify the Trilio Parties for any Losses.

In cases where Customer includes Trilio Software as a part of their cloud services, both parties agree that Trilio shall not be a party to Customer's end-user contracts (the **"Customers End-User Contract"**). Furthermore, Trilio shall not bear any liability towards the Customer or any of the Customer's end-user customers (the **"Customers End-User"**) regarding claims made by the Customers End-User related to the provision of Software by Customer or arising from the Customers End-User Contract(s). The Customer hereby indemnifies Trilio against all claims brought forth by any Customers End User against Trilio, stemming from the Customer's provision of Software or any other matters connected with the Customers End-User Contract(s).

**13.4. Process.** Promptly after an indemnified party obtains knowledge of the existence or commencement of a Claim for which it is entitled to be indemnified under this Section 13, the indemnified party will notify the indemnifying party of such Claim in writing, provided, however, that any failure to give such notice will not waive any rights of indemnified party except to the extent that the rights of indemnified party are actually prejudiced or liability increased by such failure. The indemnifying party will have exclusive control of the defense and settlement of such Claim; provided, however, that the indemnified party may join in the defense and settlement of such Claim and employ counsel at its own expense, subject to the indemnifying party's ultimate control of the defense and settlement of such Claim. The Indemnifying party may settle any Claim without the indemnified party's written consent unless such settlement does not include a release of all covered claims pending against the indemnified party.

## 14. Confidential Information

**14.1. Definition.** Confidential Information means any information disclosed by Trilio to you, either directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as confidential or that reasonably should be understood to be confidential given

the nature of the information and the circumstances of disclosure. Confidential Information shall include the Software (including, but not limited to, all source code) and any Trilio Professional Services, the terms of this Agreement and any Order Form (except that either Party may generally promote the fact that they have entered into an agreement with the other Party relating to the products and services described hereunder). Confidential Information may also include information disclosed to Trilio by third parties.

**14.2. Obligations.** You will at all times keep in confidence all such Confidential Information. You shall not (i) use any Confidential Information for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by Trilio in writing, disclose Confidential Information, except to those of its employees who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with you containing protections no less stringent than those herein. You agree to assist Trilio in remedying such unauthorized use or disclosure of Confidential Information. The foregoing obligations will not apply to the extent you can demonstrate by documentary evidence:

- The disclosed Confidential Information was part of the public domain at the time of disclosure without breach of any obligation owed to Trilio;
- The disclosed Confidential Information was lawfully in your possession at the time of its disclosure by Trilio without breach of any obligation owed to Trilio;
- You received the disclosed Confidential information from a third party without similar restrictions on disclosure and without breach of any obligation owed to Trilio.

**14.3. Compelled Disclosure.** You may disclose Confidential Information if you are compelled by law to do so, provided you give Trilio prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Trilio's expense, if Trilio wishes to contest the disclosure. If you are compelled by law to disclose the Confidential Information as part of a civil proceeding to which Trilio is a party, and Trilio is not contesting the disclosure, Trilio will reimburse you for your reasonable cost of compiling and providing secure access to such Confidential Information.

**14.4. Injunctive Relief.** You acknowledge that your breach of any of the provisions of the confidentiality and non-use obligations specified herein could cause Trilio irreparable injury for which monetary damages may not provide an adequate remedy. Therefore, in the event of your breach or threatened breach of any of your confidentiality or non-use obligations under this Agreement, Trilio shall have the right to seek specific performance or an immediate injunction to prevent or restrain the breach, in addition to any other remedies available at law or in equity.

**15. Feedback.** The parties are working together to further develop the capabilities of the Software, Professional Services and other Trilio products and services. In the event that you provide Trilio with any ideas, thoughts, criticisms, suggested improvements or other feedback related to the Software, Professional Services or Trilio services (collectively **"Feedback"**), you agree

that Trilio will own, and you agree to assign and hereby assign to Trilio all of your right, title, and interest in, such Feedback. To the extent that the foregoing assignment is ineffective for whatever reason, you agree to grant and hereby grant to Trilio a nonexclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction.

## 16. Orders, Payment, and Taxes

**16.1. Direct Payment Terms.** If Customer purchases Software, Professional Services or Trilio Offerings from Trilio under an Order Form between Trilio and Customer, Customer will pay Trilio the Fees set forth in the Order Form. Unless otherwise expressly set forth on the Order Form, all Fees will be invoiced in advance on the Effective Date of the Order Form. Fees are non-refundable and you may not terminate or cancel an Order Form except as stated in this Agreement.

**16.2. Fee Changes.** Trilio reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon thirty (30) days prior notice to Customer (which may be sent by email). Such changes will take effect: (a) for monthly subscriptions, beginning on the first day following such thirty (30) day notice period; and (b) for fixed duration subscriptions, beginning on the next renewal term.

**16.3. Payment.** All fees payable under this Agreement are payable as specified on the Order Form. Unless otherwise expressly set forth on the Order Form, payment of all invoices shall be due within thirty (30) days of the date of invoice. Any undisputed amounts not paid within such thirty (30) day period shall bear interest at a rate of one and one-half percent (1.5%) per month or at the highest lawful rate, whichever is less, from the date such an amount is due. If Customer fails to pay any overdue fees within thirty (30) days after invoice, Trilio may terminate or suspend the applicable licenses granted or services provided. If Customer's use of the Software exceeds the number of licenses set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. If Customer believes that Trilio has billed Customer incorrectly, Customer must contact Trilio no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Trilio's customer support department.

**16.4. Taxes.** Our fees exclude and you will pay applicable taxes and similar charges, including sales, usage, excise and value added taxes. Nothing in this Agreement requires either party to pay any income taxes or similar charges of the other party. If applicable law requires you to withhold any amount from your payment, you will provide us with copies of documents related to your withholding upon our request.

**16.5. Authorized Reseller Payment Terms.** If Customer purchases Software from an Authorized Reseller under an order form between Customer and the Authorized Reseller,

Customer is responsible for payment of all Fees due to the Authorized Reseller and Customer's access to the Software shall be contingent on Trilio's receipt of such Fees. Customer's access to the Trilio Offerings may require Customer's agreement to additional terms and conditions that the applicable Authorized Reseller may make available at the time of purchase ("Additional Reseller Terms"). Such Additional Reseller Terms are exclusively between Customer and the Authorized Reseller. Trilio assumes no liability or responsibility arising from or related to Additional Reseller Terms.

- 17. Export Controls.** You acknowledge that the Software, Professional Services and related products and services (collectively, the "**Trilio Offerings**") are subject to the provisions of the U.S. Export Administration Regulations and may be subject to export and import regulations in countries outside the U.S. and agree to comply with all such applicable laws and regulations, as required. The Customer acknowledges and agrees that it will not import, export, re-export, transfer or use, directly or indirectly, the Trilio Offerings in violation of the laws and regulations of any applicable jurisdiction. This restriction expressly includes, but is not limited to, the export regulations of the United States, and the import and export restrictions of any country in which you transact business. You also agree that you will not yourself, nor allow any third parties to export, import, transfer, use or re-export the Trilio Offerings, directly or indirectly (i) to any U.S. embargoed country; (ii) to any person or entity on a denial list published by the U.S. Government; or (iii) for any end use that is prohibited by United States or other applicable law, including nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer acknowledges that certain software or technologies may be classified as "restricted encryption" items under section 740.17(b)(2) of the U.S. Export Administration Regulations and may require export licenses or U.S. re-export approval when being shipped from the U.S. or other countries.
- 18. Force Majeure.** Trilio shall not be liable for the performance of its obligations under this Agreement if it becomes commercially impracticable to perform due to any contingency beyond its reasonable control, including as a result of a Force Majeure.
- 19. Compliance with Statutes and Regulations.** You will comply with all applicable Federal, state, local and foreign statutes, rules, regulations and orders, as applicable to you, including but not limited to the Foreign Corrupt Practices Act.
- 20. No Implied Licenses.** All title and ownership rights in and to the Trilio Offerings, the intellectual property embodied in the Trilio Offerings, and any trademarks or service marks of Trilio that are used in connection with the Trilio Offerings are and shall at all times remain exclusively owned by Trilio and its licensors. Nothing contained in this Agreement shall be construed as conferring any rights by implication, estoppel or otherwise, under any intellectual property right, other than the rights expressly granted in this document.
- 21. Translations.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this Agreement, and any dispute proceeding related to or arising hereunder, shall be in the English language. In the event of any discrepancy or



inconsistency between different language versions of this Agreement (and all associated documents or correspondence concerning this Agreement), the English language version shall prevail.

**22. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**23. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**24. Use of Customer Name.** Trilio may include Customer's name or logo as an Trilio customer in a list of representative customers. Trilio agrees to display the Customer's name or logo in compliance with any publishing standards defined by the Customer. Prior to developing and publicizing any profile, case study or similar document published on Trilio's website or in hardcopy describing how Trilio's products are used by Customer, Trilio agrees to obtain Customers specific approval.

**25. Assignment.** You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Trilio. Any such assignment shall be void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**26. Waiver; Severability.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**27. Governing Law; Jurisdiction.** The laws of the Commonwealth of Massachusetts, without reference to its choice of law principles, govern this Agreement and any claims arising out of or relating to this Agreement or our relationship. All disputes and controversies arising out of or relating to this Agreement or our relationship must be resolved in the state and federal courts in the county of Suffolk and Commonwealth of Massachusetts, and each of us irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of such disputes and waives all objections thereto.

**28. Survival.** Any provisions of the Agreement containing proprietary rights, confidentiality obligations, disclaimers, limitations of liability and/or indemnity terms, and any provision of the Agreement which, by its nature, is intended to survive shall remain in effect following any termination or expiration of the Agreement.

**29. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement



shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the provisions of this Agreement will apply, unless such exhibit, addendum or Order Form expressly references such conflict or inconsistency, in which case the exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Trilio Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.