

## **VAST DATA - END USER SERVICES AND LICENSE AGREEMENT**

PLEASE READ CAREFULLY THESE END USER SERVICES AND LICENSE AGREEMENT (THE “**AGREEMENT**”) BEFORE ACCESSING OR USING THE VAST DATA STORAGE SERVICES OR OTHERWISE INSTALLING, USING OR RUNNING ANY VAST DATA SOFTWARE.

BY ACCESSING OR USING THE SERVICES AND THE VAST SOFTWARE IN ANY MANNER, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THIS AGREEMENT AND YOU REPRESENT THAT YOU HAVE FULL RIGHT, POWER, AND AUTHORITY TO ENTER INTO AND PERFORM HEREUNDER.

THIS AGREEMENT IS MADE BETWEEN YOU (“**YOU**” OR “**YOUR**”) AND VAST DATA, INC. AND, AS APPLICABLE, ITS AFFILIATES (COLLECTIVELY REFERRED TO AS “**VAST DATA**”). THIS AGREEMENT APPLIES TO THE SERVICES AND ANY VAST SOFTWARE OBTAINED BY YOU DIRECTLY FROM VAST DATA OR, IF APPLICABLE, INDIRECTLY FROM A VAST PARTNER (AS DEFINED BELOW)). THE TYPES, QUANTITIES AND OTHER USAGE ATTRIBUTES RELATED TO YOUR ACCESS TO THE SERVICES AND YOUR USE OF THE VAST SOFTWARE ARE DESCRIBED IN AN ORDER OR AN AGREEMENT BETWEEN YOU AND A THIRD-PARTY VAST PARTNER OR AUTHORIZED ONLINE CLOUD SERVICES MARKETPLACE.

### **1. DEFINITIONS**

1.1. “**Affiliate**” means any entity which controls, is controlled or is under common control with either of the parties. Any entity shall be deemed to “control” another entity if it owns directly or indirectly more than 50% of the outstanding voting securities or capital of the other entity or other comparable equity with respect to an entity other than a company.

1.2. “**Compatible Hardware**” shall mean hardware and hardware configuration that is expressly designated and approved by VAST Data in the Documentation to run the VAST Software under VAST On-Prem installation mode for the purpose of enabling and making the Services available by VAST Data.

1.3. “**Confidential Information**” means information, in any form or format related to the business, technology, and operations of the disclosing party, obtained by the other party (“**Recipient**”) marked confidential, identified as Confidential Information at the time of disclosure or the nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential. Confidential Information shall not include information that the Recipient can document that: (a) is already known to the Recipient at the time of disclosure under this Agreement; (b) is independently developed by or for the Recipient without reference to or use of the Confidential Information; (c) is already public knowledge or becomes so at a future date through no fault of the Recipient; and (d) is disclosed to the Recipient by a third party without an obligation of confidentiality.

1.4. “**Customer Offering**” means a managed service data hosting offering which is provided to Your customers from Your instance, whether on-premises in the case of VAST On-Prem, or using a third party cloud computing provider engaged by You in the case of VAST On Customer Cloud.

1.5. “**Documentation**” means technical documentation regarding the Services and describing the features and functions of the VAST Software issued and generally provided by VAST Data to its customers. Such Documentation is available at:  
<https://support.vastdata.com/s/>.

1.6. “**Installation Services**” shall mean services provided by or on behalf of VAST Data for the installation of the Compatible Hardware, including racking, cabling, and labeling, and the installation of the VAST Software on such Compatible Hardware.

1.7. “**Intellectual Property Rights**” shall mean all inventions, ideas, concepts, analyses, (whether patented, or patentable, or not), methods, methodologies, designs, processes, patents, patent applications, rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions, moral rights, any information, ancillary materials, devices, results, know-how, and all rights relating to the protection of trade secrets and confidential information; design rights and industrial property rights; mask works, software, all code including source code, object code, firmware, Usage Data; and any other proprietary rights relating to intangible property.

1.8. “**Open Source Software**” shall mean collectively any software that is licensed under an open source, public source, or freeware license, which includes software licensed under licenses approved by, or substantially similar to those approved by, the Open Source Initiative and listed at <https://www.opensource.org/licenses>, or meets the “Open Source Definition” of the Open Source Initiative or the “Free Software Definition” of the Free Software Foundation and that is integrated into or with the VAST Software.

1.9. “**Order**” shall mean any written (including on-line) ordering instrument that specifies the Services, VAST Software, deployment mode, quantities, capacities, associated fees, and applicable terms governing Your access to and use of the Services and VAST Software, executed by You, issued or mutually agreed-to by VAST Data, a VAST Partner, or in the event of VAST On Customer Cloud, as approved by VAST Data, and issued and executed through an approved online hyperscale cloud services marketplace.

1.10. “**Trial Deployment**” shall have the meaning set forth in Section 4 below.

1.11. “**Services**” shall mean services that are provided hereunder by VAST including:

(i) the storage services, including access to and use of the VAST Software as generally described in the Documentation, and upgrades and updates thereto but expressly excludes new functionality that is marketed and sold as a separate product or service; and

(ii) support and maintenance services for (a) the VAST Software provided however that VAST Data’s support obligations extend only to the VAST Software and expressly exclude any support, availability obligations or responsibility relating in the case of VAST On Customer-Cloud deployments, to the underlying cloud provider, infrastructure, or associated service levels obligations and (b) Compatible Hardware, only for the VAST On-Prem deployments

provided to You by VAST DATA pursuant to the Support Services Terms which is available for the VAST On-Prem deployment at <https://www.vastdata.com/support-services-terms> and for the VAST Customer Cloud deployment at <https://www.vastdata.com/customer-cloud-terms> (the “**Support Services Terms**”).

1.12. “**Services Term**” shall mean the Initial Term and any Renewal Term(s), as such terms are defined in Section 16 below, during which You are permitted to obtain, use and access the Services pursuant to an Order or a VAST Data Partner Agreement or any written agreement executed by You and VAST Data.

1.13. “**VAST On Customer Cloud**” shall mean a mode of the VAST Software operation wherein the VAST Software is installed and deployed for operation on a customer owned/controlled cloud-hosted environment.

1.14. “**VAST On-Prem**” shall mean a mode of the VAST Software operation wherein the VAST Software is installed and deployed for operation on customer-owned Compatible Hardware located on-premises at Customer’s site.

1.15. “**VAST Partner**” (and respectively “**VAST Partner Agreement**”) shall mean any authorized third party reseller or distributor.

1.17. “**VAST Software**” shall mean the software components accessed and run in machine-readable, object code form only, as part of the Services (including any updates and upgrades thereto provided during the Services Term), for the purpose of enabling You to receive and consume the Services, whether deployed as VAST On Customer-Cloud mode or VAST On-Prem mode, or as a Trial Deployment, each as applicable set forth under an applicable Order, and including all VAST-provided components required for such operation, such as (i) cloud-hosted or locally hosted control-plane components; (ii) management interfaces, administrative consoles, and self-service dashboards; (iii) APIs, agents, connectors, orchestration tools, templates, or integration modules, telemetry, monitoring, and diagnostic modules, all to the extent made available to You as part of the Services.

## **2. STORAGE SERVICES LICENSE RIGHTS**

2.1. The commercial terms governing Your access to and the use of the Services and to the VAST Software, are set forth in the VAST Data Partner Agreement, and/or in the Order, and such terms shall include inter-alia the selected deployment type (i.e., On-Prem or Customer-Owned Cloud), the Services Term, the fees payable to the VAST Data Partner or to VAST Data, as applicable, for the Services (the “**Fees**”), the purchased and licensed capacity and any limitations thereon.

2.2. Subject to Your compliance with the terms and conditions of this Agreement together with the applicable Order and/or a VAST Data Partner Agreement (including, as applicable, licensed capacity, fees and Purpose(s)), VAST Data grants You the following:

2.2.1. a non-exclusive, non-transferable, non-sublicensable, limited and revocable right, only for the duration of the Services Term (i) with respect to deployments operating as VAST On-Prem, to have installed the VAST Software by or on behalf of VAST Data or a VAST Data Partner on Your Compatible Hardware and access and run (in machine-readable, object code form only) the VAST Software as provided by VAST Data or the VAST Data Partner on Your Compatible Hardware; or (ii) for deployments operating as VAST On Customer Cloud, access and use of the VAST Software as available for use via an authorized third-party hyperscale cloud infrastructure provider, within Your cloud-hosted environment; provided that You (and not VAST Data) are solely responsible for supplying and maintaining the required third-party cloud infrastructure in accordance with the Documentation, and maintain the VAST Software configuration as configured and deployed by VAST Data on the third-party cloud environment.

2.2.2. VAST Software and Services is permitted for the use of Your and Your Affiliates’ consumption of the Services only, and solely for the following permitted purposes: (i) storage of Your or Your Affiliates internal data and to the extent applicable and permitted under Section 2.4 below, Your customers’ data whose data You store using the Services or the VAST Software as part of Your Customer Offering; and/or (ii) internal testing or training solely on Your internal non-production environment (collectively (and as applicable) the “**Purpose**”); all of the foregoing and strictly in accordance with the Documentation;

2.2.3. access and use the Documentation solely in connection with Your (or Your Affiliates, as applicable) consumption of the Services, as permitted hereunder for the Purpose, and provided that all copyright notices are included and maintained therein.

2.2.4. for the VAST On-Prem deployment, the VAST Software is licensed independently of the Compatible Hardware You may have acquired. The VAST Software operating as VAST On-Prem deployment may be ported between Your duly owned Compatible Hardware units subject to Your prior written notification to VAST Data.

2.3. If You (or your Affiliate as applicable) are using the Services and the VAST Software of the applicable licensed capacity as set forth in an applicable Order or Partner Agreement, You are required to and hereby agree to pay all additional Fees due and payable for the unlicensed capacity that is over and above the applicable licensed capacity of Services and VAST Software (“**Excess Capacity**”). For VAST On Customer-Cloud deployment, if You (or Your Affiliate) require Excess Capacity beyond Your initial purchased entitlement, You must purchase such Excess Capacity under an applicable Order accepted and approved by VAST Data, including through the authorized hyperscale online marketplace). Fees for Excess Capacity shall be calculated according to the list-price then-applicable as of the Order or allocation of the Excess Capacity, as applicable.

2.4. If the Services Term ends and You continue to use the Services in your VAST On-Prem deployment (“**Excess Term**”), You will be running the VAST Software in an unsupported and unlicensed state and without any VAST warranty or liability. Until such time as You renew the Services Term, You will not be entitled to any Services including support and maintenance. If You wish to reinstate the Services after a lapsed period following expiration or termination of the Services Term You will be required to pay an amount equal to the Services Fee that would have been due for the accrued Services during such lapsed period, in addition to the Fees due for the going-forward Services Term. For VAST On Customer-Cloud deployment, upon the termination or expiration of the Services Term the VAST Software and the Services will automatically cease operation and should You (or Your Affiliate) require Excess Term beyond the expiration or termination of Your initial purchased entitlement, You must purchase such Excess Term under an applicable Order, including through the authorized hyperscale online marketplace). Fees for Excess Term shall be calculated according to the list-price then-applicable as of the Order or allocation of the Excess Capacity, as applicable.

2.5. You shall ensure that Your personnel, and Your Affiliates and Your Affiliates' personnel comply with the terms of this Agreement in connection with their use, access or otherwise engagement with the Services and VAST Software. You are and shall remain responsible and liable for the actions and omissions of Your Affiliates and Your Affiliates' personnel in connection with their use, access or otherwise engagement with the Services and VAST Software or this Agreement at all times.

### **3. USE RESTRICTIONS**

3.1. You agree that, with respect to the VAST Software and Pre-Release Products, You will not, nor will You permit any third party to:

(a) distribute, license, sublicense, grant access, assign or otherwise transfer or sell, in whole or in part, the Services or VAST Software to any third party (including disposing in any manner of, the Compatible Hardware while the VAST Software is still installed on it, or allowing a third party who provides services which are similar to the Services to access the Vast Software or Compatible Hardware), except as solely and expressly permitted under Section 3.3 hereunder;

(b) modify, alter, copy, transfer, emulate or create any derivative works of the VAST Software (including Pre-Release Products) and/or the Services or any part thereof;

(c) reverse engineer, decompile, decode, decrypt, disassemble, or in any way attempt to derive source code or designs from the VAST Software or Services or any part thereof;

(d) remove, alter or obscure any copyright, trademark or other proprietary rights notice, on or in, the Services, the VAST Software and/or the Documentation;

(e) bundle, integrate, or attempt to integrate with the Services or VAST Software, any third-party software technology other than as expressly permitted by VAST Data in the Documentation or otherwise in writing;

(f) use the Services or the VAST Software including Pre-Release Products or Trial Deployment(s) for any benchmarking or for competing services, activities or competing purposes or use the Vast Software or Services for any unlawful purpose;

(g) publish or disclose to any third party any technical features, quality, performance or benchmark test, or comparative analyses relating to the Services, the VAST Software and/or any Pre-Release Products or Trial Deployments, except as expressly permitted by VAST Data in writing;

(h) for VAST On-Prem deployments run or use the VAST Software in any hardware other than Compatible Hardware and in any location or system other than as set forth in the applicable Order, VAST Data Partner Agreement, as applicable, or as pre-approved by VAST Data in writing, or not in accordance with the instructions of, VAST Data or by the VAST Partner;

(i) circumvent, block, disable, remove or otherwise interfere with licensing management mechanisms provided in connection with the VAST Software, including for VAST On Customer-Cloud deployments, the outbound communication route.

(j) use the Services or VAST Software for the purpose of offering and providing services to any third parties including in a service bureau, managed services, commercial hosting services or similar environment, unless otherwise expressly authorized by VAST Data in writing; or

(k) use the Services or VAST Software in breach or excess of the types, quantities and other usage attributes related to the VAST Software rights or other limitations set forth in this Agreement.

3.2. Without limiting the foregoing, You shall ensure that You prevent any unauthorized access and/or unauthorized usage of the Services and VAST Software made available to You hereunder.

3.3. **Specific Authorization.** VAST Data may, at its sole discretion, if and to the extent permitted explicitly under a separate written instrument between You and VAST Data, such as an applicable quotation or Order, allow You to use the VAST Software for the purpose of offering and providing the Services (including in the form of hosted services) to Your customers solely in conjunction with Your Customer Offering (and never as a standalone service). Any authorization granted to You by VAST Data under this Section 3.3 and the applicable Order shall be subject to the following terms (together with such other terms and to the extent stated in the applicable Order): (i) You are and shall remain liable to VAST Data for any acts or omissions of Your customers (including their personnel) to whom You provided or made available the Services; (ii) the Services must be provided by You to such customers under a written agreement providing for substantively the same restrictions on the use of the Services and VAST Software and provides VAST Data such rights and protections no less than as set forth under this Agreement; and (iii) no customers to whom you offer, provide, or otherwise make available the VAST Service, or otherwise whose data you store using the VAST Services and VAST Software, or any of their employees, service providers, officers, directors, agents, or beneficiaries, are Sanctioned Person(s), nor are any of the foregoing located in, or using or accessing, the Services from, any Restricted Territory (each as defined in this Agreement below).

#### **4. PRE-RELEASE AND TRIAL DEPLOYMENT(S)**

4.1. VAST Data may, upon written notice, make available to You a beta or pre-release versions of its software and services (“**Pre-Release Products**”) and/or provide You with limited rights to use and access to the VAST Software for a short-term, no-cost evaluation-only deployment (“**Trial Deployment(s)**”).

4.2. You acknowledge and agree that Pre-Release Products (i) may not be at the level of performance or compatibility of final, generally available products; and (ii) may be modified prior to being made generally available and may also not be made for general release at all. In addition, the Pre-Release Products and the Trial Deployments (i) may not operate

correctly or in accordance with Your expectations or fit for Your purposes; and (ii) will not be used by You or Your Affiliates in a production environment.

**4.3. Trial Deployments Period.** Unless otherwise provided in an applicable Order or under a VAST Partner Agreement: (i) a license to use the VAST Software and Services under this Section 4 for evaluation purposes only, will commence, in the case of VAST On Customer-Cloud, upon Your initial activation of the VAST Software through Your hyper-scaler third-party cloud infrastructure account, and expire automatically sixty (60) days thereafter or such other period authorized and agreed by VAST Data expressly under an applicable Order, (the “**Trial Period**”); (ii) for Trial Deployment for the VAST On-Prem shall be subject to a separate evaluation agreement which must be entered in writing with respect to the Trial Period and other terms and conditions of the VAST On-Prem Trial Deployment, including in connection with facilitating the availability to You of Compatible Hardware (whether on loan or otherwise) to enable such Trial Deployment.

**4.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PRE-RELEASE PRODUCTS AND THE TRIAL DEPLOYMENT(S) ARE ALL PROVIDED FOR EVALUATION PURPOSES ONLY AND ON AN “AS-IS” BASIS AT YOUR OWN RISK WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE AND VAST DATA DISCLAIMS ALL LIABILITIES IN CONNECTION WITH ANY SUCH PRE-RELEASE SOFTWARE AND THE TRIAL DEPLOYMENT(S) TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

4.5. Except as otherwise provided in this Section 4 the Pre-Release Products and Trial Deployments to the extent provided by VAST Data, are and shall be considered as VAST Software.

**5. FEEDBACK.** Should You provide VAST Data with any feedback regarding the use, operation, performance, and functionality of the Services, the VAST Software (including any Pre-Release Products and Trial Deployment), including identifying potential errors and improvements (the “**Feedback**”), You agree that VAST Data can use such Feedback in whole or in part thereof, at any time and in any manner, without restrictions. You hereby

grant VAST Data a perpetual, irrevocable, worldwide, unlimited, sublicensable, fully paid-up and royalty-free right to use the Feedback and any derivative, modification and enhancement thereof in any manner.

**6. MARKS AND USE OF NAME.** This Agreement does not grant You any rights, title or interest to VAST Data's or its licensors' trademarks, service marks, trade name or logo.

**7. OPEN SOURCE AND THIRD-PARTY SOFTWARE.** The VAST Software may contain components of third-party software including Open Source Software. Third party and Open Source Software that is delivered as part of the VAST Software are included in the warranties and support commitments applicable to the VAST Software, provided they are not removed or used separately from the VAST Software and that Your use of the VAST Software is as permitted and is in compliance with this Agreement (including any Order).

## **8. EXPORT RESTRICTIONS AND RELATED REPRESENTATIONS**

8.1. You acknowledge that the VAST Software and Documentation is subject to United States', the European Union's and other countries' export jurisdiction, as applicable. You hereby represent and warrant that You, Your Affiliates (and to the extent applicable and permitted under this Agreement any customers to whom You offer, provide, license, sell or otherwise make available the VAST Service or VAST Software or whose data You store using the VAST Services or VAST Software), and any employees, service providers, officers, directors, agents, or beneficiaries or any of the foregoing, are not and shall not be a (i) Sanctioned Person(s), and (ii) shall not operate in, reside in, or use or access the VAST Services for VAST Software, in or from a Sanctioned Country. Without derogating from the foregoing, You will comply with all applicable national and international laws that apply to Your use of the VAST Software, including United States Export Administration Regulations, as well as end user, end use and destination restrictions which may be issued by the United States and other governments from time to time. You will obtain all required authorizations, permits, or licenses to export, re-export or import, as required.

8.2. For the purposes hereof the following terms shall at all times have the following meanings:

**“Sanctioned Person”** shall mean (a) any person or entity listed on an Sanctions-related list of designated persons maintains by Office of Foreign Assets Control (OFAC), the Department of State, the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority, (b) any person or entity operating, organized or resident in a Sanctioned Country or (c) any person or entity owned or controlled by such person or persons described in paragraph (a) or (b). **“Sanctioned Country”** shall mean a country region or territory which is itself the subject of or target of any sanctions and anti-money laundering laws, regulations, trade embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, enacted and/or enforced by the United States, United Nations, European Union, any other applicable jurisdiction, and including without limitation, Cuba, Iran, Syria, Sudan, North Korea, Lebanon, Russia, Belarus, Crimea region of Ukraine.

8.3. You will maintain records as reasonably necessary to enable You to demonstrate compliance with the terms and conditions of this Agreement for three (3) years after expiration or termination. VAST Data may audit Your records by an independent and internationally recognized accounting firm retained by VAST Data, which will have access to Your relevant records, solely for the purposes of confirming compliance with and accuracy of performance under this Agreement, and subject to appropriate confidentiality obligations. VAST Data shall give You not less than thirty (30) business days’ notice of an audit pursuant to this Section 8.3, and shall not exercise this right more than once per any twelve (12) month period unless an audit reveals any non-compliance. Such audits shall be conducted only during Your normal business hours and shall not unreasonably disrupt Your business operations.

## **9. LIMITED WARRANTY; DISCLAIMERS**

9.1. Unless otherwise required by applicable law, and subject to the provisions and limitations hereunder, VAST Data warrants that, the Services and the VAST Software shall, during the Services Term, substantially comply with the VAST Software specifications set forth in the Documentation.

9.2. To the extent permitted by applicable laws, VAST Data's sole obligation and Your sole and exclusive warranty and remedy under Section 9.1 above is limited to VAST DATA's rectifying, at its own expense, any such defect which was notified to VAST Data at [VASTSUPPORT@VASTDATA.COM](mailto:VASTSUPPORT@VASTDATA.COM) during the Services Term. Unless otherwise agreed between You and VAST Data, such rectification of the defect may be performed, by repair, replacement, or correction of the Services or the VAST Software or any part thereof. In the event VAST Data is not able to rectify the defect as specified above, You are entitled to cancel the Services and VAST Data will refund any pre-paid Services Fees received by VAST Data for the remainder of the Services Term. It is agreed and acknowledged that all VAST Data warranty, liability and obligation to provide the Services shall only remain in effect for the duration of a fully paid-up Services Term.

9.3. VAST Data's warranty under Section 9.1 above will be void in the event the VAST Software or any part thereof is: (i) modified or adjusted in any manner by any party other than VAST Data or without VAST Data's written approval, (ii) used in conjunction with Your or any third party's products, which resulted in the defect, other than as specified in the Documentation or approved in writing by VAST Data, (iii) abused, mishandled, misused or otherwise used not in accordance with the Documentation and the terms of this Agreement, (iv) used in crypto-mining activities, unless expressly authorized by VAST DATA, or (v) was not updated with VAST Data's most recent Software release provided to You by VAST Data within a reasonable period of time.

9.4. In addition, for VAST On Customer-Cloud, VAST Data expressly disclaims any representation, warranty or liability (and the VAST Data's warranty under Section 9.1 shall not apply) and with respect to any issues, failures, or non-conformities arising from or related to (i) Your cloud environment, cloud account, or cloud service provider (including without limitation any outages, performance degradation, configuration errors, insufficient capacity, network restrictions, security settings, or changes implemented by such provider); (ii) configuration, management, or operation of Your cloud infrastructure, including any virtual machines, storage, networking, IAM policies, or third-party services. You further agree and acknowledge that any cloud-infrastructure service levels, availability, and performance shall be governed solely by Your agreement with Your cloud provider, and VAST Data bears no responsibility or liability for the same.

9.5. TO THE EXTENT PERMITTED BY LAW AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, VAST DATA MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES (I) THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-INTERFERENCE; AND THAT (II) THE VAST SOFTWARE IS ERROR-FREE OR YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED.

## **10. INSTALLATION SERVICES**

10.1. This Section 10 applies to Installation Services which you may purchase from VAST Data or a VAST Data Partner with respect to a VAST On-Prem deployment under an applicable Order. VAST Data or Vast Partner (or its authorized subcontractors) will provide Installation Services purchased by You in accordance with the terms of this Agreement and the Installation Services Description, which is available at <https://www.vastdata.com/resources/solution-briefs/customer-success-installation-service-brief>, provided that You fully comply with Your responsibilities set forth in such Installation Services Description.

10.2. In connection with said VAST On-Prem deployment, VAST Data warrants that the Installation Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices by personnel with sufficient skill, knowledge, and training. In the event of VAST Data's breach of the foregoing warranty, VAST Data will re-perform such Installation Services. To the extent permitted by applicable laws, VAST Data's sole obligation and Your sole and exclusive warranty and remedy under this Section 10 are limited to VAST Data re-performing such Installation Services, at its own expense, provided that such breach of warranty was notified to VAST Data at [VASTSUPPORT@VASTDATA.COM](mailto:VASTSUPPORT@VASTDATA.COM) within 30 days from the date of completion of the Installation Services by VAST Data.

## **11. USAGE DATA**

Unless otherwise set out in a in an Order or in a VAST Data Partner Agreement, You hereby give Your express consent that, the VAST Software may collect, analyze and store certain

metrics and diagnostic information in connection with the routine operation of the VAST Software and Services, including, performance, capacity usage, data reduction ratios, configuration data and hardware or infrastructure faults (“**Usage Data**”) which will be periodically transmitted to or accessed by VAST Data. VAST Data may use Usage Data for the purpose of (i) providing and supporting the Services; and (ii) improving the Services and the VAST Software. No interruption of service is required to gather such Usage Data. If You or any third party acting on Your behalf, interrupts or prevents VAST Data’s collection of Usage Data, You must provide VAST Data with prior written notice thereof. The monitoring service made available via the Services (including for example “Call Home”, “Uplink”) enables the collection of Usage Data. By deactivating Your monitoring service functionality, You may have VAST Data cease collection of the Usage Data. If You do not provide consent to VAST Data to store and collect Usage Data, and/or if You deactivate Your monitoring service functionality, You accept and agree that: (i) VAST Data’s support services and the response times to resolve any issues may be adversely impacted; and (ii) the VAST Data technical services and support teams will be more dependent upon Your administrators to take an active role in monitoring and in troubleshooting solution issues.

## **12. PROPRIETARY RIGHTS**

You agree and acknowledge that VAST Data and its licensors are and shall remain the sole and exclusive owner of any and all Intellectual Property rights in or pertaining to the Services, the VAST Software, the Documentation and any part thereof, including any modifications, enhancements, improvements, updates and upgrades, and derivative works, thereof. Other than as explicitly stated hereunder, no license, express or implied, in or to the Intellectual Property Rights of VAST Data, is granted to You under these terms.

## **13. CONFIDENTIALITY**

Confidential Information includes, but is not limited to, benchmarks, pricing and roadmaps, and nonpublic information about either party or its products. The Recipient of Confidential Information will use at least commercially reasonable efforts to maintain the confidentiality of the disclosing party’s Confidential Information, agrees to use Confidential Information only for purpose of carrying out this Agreement, and will notify the disclosing party promptly of any unauthorized use or disclosure of Confidential Information.

Notwithstanding the foregoing, VAST Data may process Customer's Confidential Information which is derived from Customer's use of the Services solely for internal purposes and for improving the VAST Software and its services. Confidential Information may be disclosed and used by Recipient's employees, partners, contractors, professional advisors and third parties ("**Representatives**") having a need to know and who are under a written obligation of confidentiality and non-use with recipient, no less protective as these terms herein. Recipient shall remain responsible for the act or omissions of its Representatives in connection with any Confidential Information of the disclosing party and shall further cause such Representatives to strictly abide by the terms of those written agreements. Without limiting the foregoing, You may not display or allow any third parties to use or otherwise have any access to the VAST Software or to any information regarding the Services and/or performance thereof including any business, installation, performance, reliability, optimization or integration information, and Your impression of the Services and the VAST Software, all of which are deemed VAST Confidential Information (the "**VAST Information**"). Confidential Information shall: (a) be treated as highly confidential by Recipient, kept by Recipient in absolute confidence and be afforded by Recipient all reasonable and necessary safeguards (and at least the same level of protection that Recipient affords its own confidential information) to protect such information from any disclosure which is not expressly permitted hereunder (b) not be divulged, directly or indirectly, by Recipient to any third party for any purpose whatsoever, and (c) not, without the prior written consent of disclosing party, be used by Recipient for any purpose except as set forth in this section. Nothing in this Agreement shall prevent Recipient from disclosing Confidential Information that is required to be disclosed pursuant to any judicial or administrative proceeding, provided that the Recipient immediately, after receiving notice of such action and to the extent permitted by law, notifies the disclosing party of such action to give the disclosing party the opportunity to seek any other legal remedies to maintain such information in confidence.

## **14. INDEMNIFICATION**

14.1. VAST Data shall indemnify You against any costs and damages actually awarded against You by a competent court in a final judgment or in a court approved settlement, to the extent resulting from a third party claim alleging that the Services or the VAST Software, or any portion thereof, infringes such third party's patent, trademark or copyright ("**Claim**"). Such obligation is subject to You: (i) promptly notifying VAST Data in writing of any such Claim; (ii) providing VAST Data with sole control of the defense and/or settlement

negotiations of the Claim; (iii) furnishing to VAST Data, on request, all reasonable information and assistance for such defense; and (iv) not admitting fault with respect to the Claim and/or making any payments or concessions with respect to such IP Claim without the prior written consent of VAST Data. VAST Data shall (i) keep You duly informed in connection with the litigation and/or settlement negotiations, and (ii) not execute any settlement covenant that imposes any liability or obligations on You without Your prior written consent.

14.2. Should the VAST Software, or any part thereof, become, or in VAST Data's opinion be likely to become, the subject of any infringement claim as specified above, then VAST Data will, at its own option and expense either: (i) procure the right to continue using the VAST Software without infringement; (ii) replace or modify the VAST Software without substantially reducing its functionality, so that it becomes non-infringing; or (iii) if VAST Data determines that (i) or (ii) cannot be achieved by using reasonable commercial efforts, VAST Data shall be entitled to terminate the Services and Your right to use the VAST Software immediately upon written notice, in which event VAST Data will refund any pre-paid Services fee paid by You for the remainder of the Services Term.

14.3. Notwithstanding the foregoing, VAST Data shall have no obligation or liability for any Claim to the extent resulting from or relating to (i) use of the Services or the VAST Software by You or on Your behalf in violation of any provision of this Agreement, (ii) Your failure to install or interference with the installation of updates or new releases of the VAST Software as instructed or provided by VAST Data at no cost or to cease using the VAST Software, if requested by VAST Data, (iii) use of a combination of the VAST Software or any part thereof with other products, equipment, or software not provided or approved in writing for such use in the Documentation or by VAST Data, (iv) modifications not approved by VAST Data of the VAST Software or the Compatible Hardware in with respect of VAST On Prem deployment, or for VAST On Customer-Cloud the cloud configuration provided by VAST Data; (v) for VAST On Customer-Cloud deployment, Your failure to maintain Your fully-paid-up account for third-party cloud infrastructure on which such VAST Software is deployed or Your third party cloud provider failure to operate and maintain Your cloud infrastructure on which the VAST Software is deployed.

14.4. This Section 14 states Your sole and exclusive remedy and VAST Data's entire liability with respect to Claims.

## 15. LIMITATION OF LIABILITY

15.1. **Exclusions.** Unless prohibited under applicable law, regardless of the basis of the claim, in no event will VAST Data have any liability to You for any indirect, consequential, special, punitive exemplary or incidental damages, loss of profits, revenues, anticipated savings or goodwill, loss of data, all even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. VAST Data shall have no responsibility or liability for any claim to the extent resulting from or relating to any unauthorized use of the Services or the VAST Software by You or on Your behalf, or in breach of the permitted license Purpose(s), the Storage Services License Rights set out in Section 2 above; or the User Restrictions set out in Section 3 above.

15.2. **Liability Cap.** Unless prohibited under applicable law, in no event will VAST Data's aggregate liability to You exceed the amounts paid or payable, whether to VAST Data or to a VAST Partner, in respect of a twelve (12) months license period for the VAST Software and Services preceding the date the applicable claim arises. For a multi-year prepaid Services Term, the prepaid Fees shall be allocated on a straight-line basis across the Services Term, such that the value attributable to each twelve (12) month-period equals the total prepaid Fees divided by the number of years in the Services Term.

15.3. **Exceptions.** The limitations set forth in Section 15.1 and 15.2 will not apply to liability for claims arising from (i) death or bodily injury; and (ii) VAST Data's willful misconduct, fraud or gross negligence.

## 16. TERM AND TERMINATION

16.1. **Term.** This Agreement shall be in effect for the duration of the Services Term (and mutatis-mutandis, for the duration of any Trial Period, as applicable) if and as extended from time to time in accordance with the terms of this Agreement, an Order or of the VAST Data Partner Agreement, as applicable. The Services Term shall commence on the day the VAST Software license key is delivered to You and be valid for such number of months set out in the Order, unless terminated in accordance with this Section 10 (the "**Initial Term**").

16.2. **Renewal.** Unless otherwise set forth in a VAST Data Partner Agreement or an Order (as applicable), Services Term purchased under such VAST Data Partner Agreement or an Order, will automatically renew for the same duration as the Initial Term (each a “**Renewal Term**”) unless either party notifies the other party of its intent not to renew at least 45 days before the then next Renewal Term.

16.3. **Termination.** VAST Data may terminate this Agreement together with all rights and licenses granted hereunder with immediate effect on written notice in the event You breach Section 2 or Section 3 of this Agreement. Either party may terminate this Agreement or an Order for material breach if such material breach is not remedied within 30 days of written notice of such material breach. Any failure to remit payments in relation to the Services and the VAST Software when due, whether payable to VAST Data or a VAST Data Partner, constitutes a material breach of this Agreement. This Agreement and all rights and licenses granted hereunder shall automatically terminate once all Orders have expired or have been terminated and all Services Term(s) are no longer in effect.

16.4. **Effect of Termination.** Upon termination of this Agreement or expiry of the Services Term, the right to use the Services shall expire. Upon the expiry of the Services Term, You will promptly return or destroy all VAST Data’s Confidential Information. Upon VAST Data’s request, You agree to certify in writing that Your compliance with this Section 16.4. Sections 1, 3.1, 5, 6, 7, 8, 9 and 11-17, will survive any termination or expiration of this Agreement.

## **17. GENERAL**

17.1. **Severability.** In the event any provision or part of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, it shall be amended to the extent required to render it valid, legal and enforceable, or deleted if no such amendment is feasible, and such amendment or deletion shall not affect the enforceability of the other provisions hereof.

17.2. **Marketing Rights.** You grant VAST Data the right to name Your entity as a VAST Data customer, publish Your logo and entity name on the VAST Data website as well as in any marketing materials such as data sheets, whitepapers, and brochures.

17.3. **Waiver.** No waiver of any breach of this Agreement will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

17.4. **Entire Terms.** This Agreement supersedes all previous agreements or representations, written or oral, with respect to the subject matter hereof between You and VAST Data. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party.

17.5. **Force Majeure.** Neither party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental riots, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a party (Collectively, “**Force Majeure**”). Notwithstanding any of the foregoing, Force Majeure is not applicable to Your failure of payment.

17.6. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be controlled, by and construed under the laws as follows:

(i) if You are located in the United States, the laws of the State of New York shall apply without giving effect to the principles of conflicts of laws;

(ii) if You are located in a country where VAST Data has an Affiliate the laws of the country where VAST Data has such Affiliate shall apply; or

(iii) if You are in a country in which VAST Data has no Affiliate the laws of England and Wales shall apply.

VAST Data shall reserve the rights to control all aspects of any lawsuits or claims that arises from Your access to the Services or use of the VAST Software or Documentation. A list of VAST Data Affiliates can be found here: <https://www.vastdata.com/affiliates>.